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**Report of a Judicial Inquiry
Re: His Honour
Judge W. P. Hryciuk
A Judge of the Ontario Court
(Provincial Division)**

**The Honourable
Madam Justice J. MacFarland
Commissioner**



1993



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Commission of Inquiry Re:
His Honour Judge W.P. Hryciuk
a Judge of the Ontario Court
(Provincial Division)

Commission d'enquête au sujet du
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TO HIS HONOUR THE LIEUTENANT GOVERNOR OF THE PROVINCE OF ONTARIO

May It Please Your Honour:

Pursuant to my appointment by Order in Council No. O.C. 369/93 to make inquiry and report to the Lieutenant Governor in Council into whether His Honour Judge Walter P. Hryciuk, a judge of the Ontario Court (Provincial Division), should be removed from office, I hereby submit my report.

A handwritten signature in black ink, reading 'Jean MacFarland'.

Commissioner

24 November 1993

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Executive Council
Conseil des ministres

Order in Council
Décret

WHEREAS:

A letter of complaint dated January 24, 1992 from Jerome F. Wiley, Regional Director of Crown Attorneys, Toronto Region, regarding certain conduct of His Honour Judge Walter P. Hryciuk, a judge of the Ontario Court (Provincial Division), was received by the Ontario Judicial Council;

The investigation by counsel to the Judicial Council gave rise to further information regarding Judge Hryciuk;

The Judicial Council, on notice to Judge Hryciuk, proceeded under subsection 49(1) of the *Courts of Justice Act* to investigate two matters of complaint;

The Judicial Council held hearings on October 1 and 13, 1992, at which witnesses were examined and cross-examined in the presence of Judge Hryciuk and his counsel, and submissions were made by counsel for Judge Hryciuk and the Judicial Council;

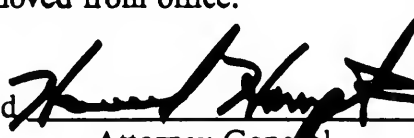
The Judicial Council came to the conclusion that by reason of the evidence adduced at the hearing before it, an inquiry should be held under section 50 of the *Courts of Justice Act* with respect to these complaints;

The Judicial Council recommended to the Attorney General, under subsection 49(7) of the *Courts of Justice Act*, in its report dated January 12, 1993, that the inquiry should be held,

ON THE RECOMMENDATION OF THE UNDERSIGNED, THE LIEUTENANT GOVERNOR, BY AND WITH THE ADVICE AND CONCURRENCE OF THE EXECUTIVE COUNCIL, ORDERS THAT:

the Honourable Madam Justice Jean L. MacFarland, a judge of the Ontario Court (General Division), is appointed under section 50 of the *Courts of Justice Act* to inquire into the question whether His Honour Judge Walter P. Hryciuk, a judge of the Ontario Court (Provincial Division), should be removed from office.

Recommended


Attorney General

Concurred


Chair of Cabinet

Approved and ordered February 3, 1993


Lieutenant Governor

**COMMISSION OF INQUIRY RE:
HIS HONOUR JUDGE W.P. HRYCIUK
A JUDGE OF THE ONTARIO COURT
(PROVINCIAL DIVISION)**

Introduction

The appointment and tenure of a Provincial Court judge in Ontario, is governed by the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. 43. Section 42(1) of the Act provides that appointment to office is made by the Lieutenant Governor in Council, on the recommendation of the Attorney General. Removal from office prior to retirement age may be ordered by the Lieutenant Governor on the address of the Legislative Assembly only if, in the words of Section 46(1):

- (a) a complaint regarding the judge has been made to the Judicial Council; and
- (b) the removal is recommended by an inquiry held under Section 50, on the grounds that the judge has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) infirmity,
 - (ii) conduct that is incompatible with the execution of his or her office, or
 - (iii) having failed to perform the duties of his or her office.

A letter of complaint dated January 24, 1992 from Jerome F. Wiley, Q.C., Regional Director of Crown Attorneys, Toronto Region, regarding certain conduct of His Honour Judge Walter P. Hryciuk, a judge of the Ontario Court (Provincial Division), was received by the Ontario Judicial Council. An investigation by counsel to the Judicial Council gave rise to further information regarding Judge Hryciuk and the Judicial Council, on notice to Judge Hryciuk, proceeded under Section 49, subsection 1 of the *Courts of Justice Act* to investigate the following two matters of complaint:

1. That His Honour Judge Walter P. Hryciuk, on Saturday, January 18, 1992, at Old City Hall, Toronto, did sexually assault Ms. Kelly Smith, an Assistant Crown Attorney for the Toronto Region.
2. That His Honour Judge Walter P. Hryciuk, in 1988, made remarks of a sexual nature to Ms. Susan Lawson, an Assistant Crown Attorney, and drew her attention to a sexually graphic light switchplate in his judicial chambers.

The Judicial Council held hearings on October 1 and 13, 1992, at which witnesses were examined and cross-examined in the presence of Judge Hryciuk and his counsel, and submissions were made by counsel for Judge Hryciuk and the Judicial Council. The Judicial Council came to the conclusion that by reason of the evidence adduced at the hearing before it, an inquiry should be held under Section 50 of the *Courts of Justice Act* with respect to these complaints and so recommended to the Attorney General in its report dated January 12, 1993. The legislation provides that such inquiry is to be conducted by a judge of the General Division (of the Ontario Court), and by Order in Council dated February 3, 1993 this Commission was appointed to:

. . . inquire into the question whether His Honour Judge Walter P. Hryciuk, a judge of the Ontario Court (Provincial Division), should be removed from office.

On July 26, 1993 applications for standing were heard and granted to Judge Hryciuk, to Kelly Smith and to Susan Lawson. Thereafter these parties were represented by counsel; Richard D. McLean, Q.C. and Mark Elkin for Judge Hryciuk, and Douglas C. Hunt, Q.C. and Jane Kelly for Kelly Smith and Susan Lawson.

On September 30, 1993, during the course of the public hearings, an application for standing was made on behalf of Kelly Ann James, and His Honour Judge Joseph Bovard, which was granted and from that date forward those parties were also represented by counsel, John Struthers and T. Sam Boutzouvis.

On August 23, 1993, the Canadian Broadcasting Corporation made application to televise the public hearings of the Inquiry and Sangeet-Bharati Radio Program to broadcast the proceedings. Both applications were granted, subject to certain procedures, for reasons given at the time.

All counsel were able to agree on certain procedural rules to be followed throughout the hearing, as well as the procedures to be followed by the media. Those rules are set out in two documents entitled respectively, "Submission on Procedure" and "Submission on the Media", which are exhibits to these proceedings.

In addition to the two motion days, July 26 and August 23, there were ten days; September 13-17, September 30 and October 4-7, during which time, witnesses were heard and one day, October 7, for final submissions and argument, a total of thirteen days in all. Some sixty-one witnesses gave evidence before the Commission.

Notices were published in the *Globe and Mail* and *Toronto Star* newspapers on June 23, 1993 to give the public notice that any preliminary motions would be heard on July 26, 1993 and the public hearing, for the taking of evidence, would continue on September 13, 1993. Notices were also published in the *Globe and Mail*

on August 3, 1993 and in the *Toronto Star* on August 5, 1993, to require any applications by the electronic media to televise or otherwise record all, or part, of the proceedings to be made to Commission Counsel by August 13, 1993. In addition, those notices specified the two matters of complaint which had been heard by Judicial Council and repeated that public hearings were to commence on September 13, 1993. Those notices are Exhibits 2 and 5 in these proceedings.

As was stated by Mr. O'Connor in his opening statement, the inquiry proceeded under section 46(1) (b)(ii) of the *Courts of Justice Act* which reads:

- 46.-(1) A provincial judge may be removed from office before attaining retirement age only if,
- (a) a complaint regarding the judge has been made to the Judicial Council; and
 - (b) the removal is recommended by an inquiry held under section 50, on the ground that the judge has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (ii) conduct that is incompatible with the execution of his or her office, or . . .

The inquiry was not concerned with infirmity, nor with any suggestion that Judge Hryciuk had failed to perform the duties of his office.

The Judge's Background

Judge Walter P. Hryciuk is 58 years of age, he has been married to his wife Dorothy for 29 years, and he lives with her in their home in Etobicoke. He has two adult children. Judge Hryciuk attended primary and high school in Toronto, and completed his undergraduate work in Russian language and literature at the University of Toronto. He attended Osgoode Hall Law School, from which he graduated in 1961. In May of 1963, he was called to the bar of Ontario. He immediately entered private practice with a classmate, that firm known as "Heinrich and Hryciuk." Judge Hryciuk did the litigation and criminal work, leaving his partner to do estates and real estate. His facility with languages, he is fluent in Russian and Ukrainian, conversant in Polish, understands Serbian, permitted him to cater to ethnic communities. He continued in practice with Mr. Heinrich for about 15 years when they parted ways and Judge Hryciuk then joined Stanley Potter in partnership for about two and one-half years prior to his appointment to the Provincial Court bench on April 18, 1978.

On the evidence before me it appears that Judge Hryciuk, as a judge, has the respect, admiration and affection of many of his colleagues on the bench and

many members of the criminal bar, both defence and Crown, appearing regularly before the Provincial Division of the Ontario Court. He has been described not just as a good judge but rather, an excellent judge. There were one hundred and forty-eight letters filed in support of Judge Hryciuk from persons from all walks of life. I have read them all and they are a tribute to the man. Judge Bernard Kelly, the Provincial Regional Senior Judge for the Toronto Region wrote in part “ . . . no other Judge has made a greater contribution to the Toronto Region than Judge Hryciuk.” Two particularly moving letters came from Ms. Mavin Wong and retired Judge J.L. Clendenning.

The conduct which forms the subject matter of this inquiry does not relate to misconduct in the exercise of official judicial functions – Judge Hryciuk’s past performance on the bench is not in question. What is in question, however, is his personal conduct in the courtroom, in his chambers and at functions where judges, court staff, lawyers and other members of the legal community are present, and the way that conduct affects, or may appear to affect, his judicial office and his ability to discharge the functions of a judge engaged in the administration of criminal justice.

The Standard of Proof

Before considering the specific incidents which were the subject of this inquiry, it is appropriate to consider the standard of proof which is applicable in matters of this nature. In his final submissions, Mr. Elkin, on behalf of Judge Hryciuk, made the following comments in reference to the report of The Honourable Mr. Justice Donald A. Keith in the 1969 Inquiry Re: Provincial Judge Lucien Coe Kurata:

Mr. Elkin: “Now, the Provincial Court judge who was the subject of this inquiry had been consorting with undesirable individuals and had also attempted to take his own life.

He was defended by Arthur Maloney, and Mr. Maloney argued that the standard of proof should be the same in a criminal case, proof beyond a reasonable doubt.

Mr. Justice Keith did not accept that.

The test in my submission, is set out on page 6. Madam Commissioner, without going into any great detail, because I’m sure you’ll have an opportunity to look at it later on, the test is somewhere between a civil standard, proof on the balance of probabilities, approaching the criminal standard. It’s somewhere in between.

I would submit that the more serious the charge, be it a criminal or quasi-criminal charge in the context of a civil trial, the higher the burden is.

There is a London Life case of the Supreme Court of Canada, 1929, set out, which was adopted by the Supreme Court of Canada in 1963. I leave that for you to read, but I will say this:

With respect to the allegations made by Kelly Smith and Kelly James, they are absolutely criminal allegations. They are not quasi-criminal, they are totally criminal.

Then I would suggest that, in attempting to find a standard, that this would be the highest standard you could possibly have in a civil matter, without approaching proof beyond a reasonable doubt.

These allegations against Judge Hryciuk are extremely serious, and I would ask, Madam Commissioner, that the tests you apply to those two allegations, specifically, should be very high.

And if Arthur Maloney had not lost the argument of proof beyond a reasonable doubt in 1969, I'd be making it here today, because I would submit it is the proper test, but we won't break new ground today."

Commission Counsel cited Mr. Justice Keith's reasoning in the Kurata Inquiry in respect of the burden of proof and submitted that the Commission is entitled to make its decision on the balance of probabilities. It was noted that the burden of proof might best be expressed as that which is applied in many disciplinary proceedings where it is acknowledged that a disciplinary tribunal is entitled to make a decision on the balance of probabilities. As Ms. Kristjanson said, the degree of proof required will vary, depending on the totality of the circumstances, including the nature and consequences of the acts, the seriousness of the allegations and the gravity of the consequences flowing from particular findings. It is useful to look at what Mr. Justice Keith had to say in dealing with this issue at pages 6 and 7 of his report.

In carrying out this Commission, I do not sit as a Court, I have no power to punish, I can only listen to the evidence, weigh and assess it impartially and make my report thereon to the Lieutenant Governor in Council.

In undertaking this task I recall the language of Mignault, J. in whose judgment Anglin, C.J.C. and Rinfret, J. concurred in the case of *The London Life Insurance Company v. Trustee of the Property of the Lang Shirt Company Limited*, [1929] S.C.R. 117 at pp. 125-6:-

"That there is, in the law of evidence, a legal presumption against the imputation of crime, requiring before crime can be held to be

established proof of a more cogent character than in ordinary cases where no such imputation is made, does not appear to admit of doubt. In criminal cases, this rule is often expressed by saying that the crime imputed must be proved to the exclusion of reasonable doubt. There is authority for the proposition that the same presumption of innocence from crime should be applied with equal strictness in civil as well as in criminal cases (Taylor Evidence, 11th ed., vol. 1, par. 112, and cases referred to). Whether or not, however, the cogency of the presumption is as great in civil matters as in criminal law (a point not necessarily involved here), I would like to adopt the statement of the rule by Middleton, J.A., in the Court below, which appears entirely sound:-

‘ . . . While the rule is not so strict in civil cases as in criminal, I think that when a right or defence rests upon the suggestion that conduct is criminal or quasi-criminal, the Court should be satisfied not only that the circumstances proved are consistent with the commission of the suggested act, but that the facts are such as to be inconsistent with any other rational conclusion than that the evil act was in fact committed. See Alderson, B., in *Rex v. Hodge*, (1832) 2 Lewin C.C. 227.’

My task is akin to the task of a Court required to determine in a civil action whether or not a crime has been committed, e.g. forgery, theft, suicide and so on.

The standard of proof in such a situation has been settled in this country by the unanimous judgment (on this point) of the Supreme Court of Canada in *Hanes v. The Wawanesa Mutual Insurance Company*, [1963] S.C.R. 154. The foregoing passage from the *London Life* case was quoted with approval and it was held that while a high degree of proof would be required the Court was still entitled to make its decision on the balance of probabilities.

It may be useful also to quote the language of Denning, L.J. in *Bater v. Bater*, [1950] 2 All E.R. 458 at 459, where he said:-

“The difference of opinion which has been evoked about the standard of proof in these cases may well turn out to be more a matter of words than anything else. It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved

beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.”

I am in agreement with the views expressed by Mr. Justice Keith for the reasons he gave. The burden of proof is the civil burden, but in order to meet that burden the cogency of the evidence must be greater than in an ordinary negligence case and I, as the trier of fact, must accordingly subject such evidence to greater scrutiny.

The Inquiry Process

During the course of this inquiry, comments have been made publicly and in the press by Judge Hryciuk and counsel on his behalf, to the effect that his interests would have been better served had he been required to face criminal charges in relation to these complaints. In addition, during his time in the witness box Judge Gonet took advantage of the opportunity to express his view that:

“ . . . this matter should have been dealt with in a more appropriate way at an earlier time, in different circumstances. We wouldn’t be here today.”

The process is governed by legislation. The Judicial Council is established by Section 47 of the *Courts of Justice Act*, and one of the functions which it is legislated to perform, is to receive and investigate complaints against provincial judges. In this instance, the Judicial Council received the letter of complaint from Jerome F. Wiley, Q.C., dated January 24, 1992, caused an investigation to be undertaken and on notice to Judge Hryciuk, proceeded under subsection 49(1) of the *Courts of Justice Act* to investigate two matters of complaint, which may shortly be described as the “Kelly Smith matter” and the “Susan Lawson matter.” A hearing was held on October 1 and 13, 1992, in the presence of Judge Hryciuk and his counsel, at which time, witnesses were examined and cross-examined and submissions were made. That hearing was held in private, as is required by subsection 49(3) of the Act. Judicial Council concluded an inquiry should be held

under Section 50 of the *Courts of Justice Act*, and so recommended to the Attorney General of this province. It was the result of that recommendation that the Order in Council constituting this commission was made on February 3, 1993.

The complaints against Judge Hryciuk were handled in the manner required by, and set out in the governing legislation. They could not legitimately have been handled in any other way.

The *Public Inquiries Act* applies to every Commission of Inquiry appointed under Section 50 of the *Courts of Justice Act*. That Act requires that, except in certain exceptional circumstances set out therein, all hearings on an inquiry are open to the public.

Mr. Elkin's suggestion that his client would be better off facing a criminal prosecution in relation to the conduct of which complaint is made here, is a curious one. He seemed to suggest that had his client been charged criminally and had available to him the usual protections and defences available to accused persons, he would in all likelihood have been acquitted. It does not follow from that, however, that Judge Hryciuk would not in those circumstances, then have been subject to the process and procedures set out in the *Courts of Justice Act* set out above.

The issue before the public inquiry is whether a judge should be removed from office by reason of conduct incompatible with the execution of judicial office. It is a function of the inquiry to look at the totality of the judge's conduct. Acquittal on related criminal charges is not necessarily the end of matters. One has only to look at the report of the late Mr. Justice Rand on the Landreville Inquiry, for an example of where removal of a judge was recommended, although related criminal charges against that judge had been dismissed. The considerations before such an inquiry are much broader in scope I suggest, than in a criminal prosecution arising out of similar circumstances.

The Order in Council constituting this Commission of Inquiry is very broadly worded and reads:

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

The Honourable Madam Justice Jean L. MacFarland, a judge of the Ontario Court (General Division), is appointed under Section 50 of the *Courts of Justice Act* to inquire into the question whether His Honour Judge Walter P. Hryciuk, a judge of the Ontario Court (Provincial Division), should be removed from office.

The order does not refer to any specific incident or incidents, as have others in cases past. In the Kurata Inquiry, the Order in Council constituting that inquiry made reference to two specific incidents: an alleged suicide attempt, and an incident

involving a certain policewoman. In respect of whether consideration could, or should be given to other matters, the Commissioner, at page 9 of his report, had this to say:

“It is abundantly clear, however, that if additional matters are brought to my attention relevant to the behaviour or misbehaviour of the said Provincial Judge or respecting his ability or inability to perform his duties properly, I am not only not precluded from inquiring into such matters, but it is my bounden duty to do so and report upon them.”

I am in total agreement with Mr. Justice Keith on this point. In my view, it is the duty of the Commission to hear any and all relevant matters pertaining to the issue before it; it would be wrong to limit the inquiry to a consideration of only the two matters heard by the Judicial Council.

It seems to me that one of the purposes of the public inquiry is to open up to the public a process, which to that point in time, has remained private. It must be expected that members of the public who may think they had information relevant to the issue before the Commission, would come forward. It would not, I suggest, be a very satisfactory response, nor in the public interest, to tell such persons that they must first make their complaint to Judicial Council, and then to have, if that body considers it appropriate, a second public inquiry. To say nothing of the perception that would be left with the public were such complaints ignored by this Commission and particularly so where one judge is in effect being asked to judge the conduct of a fellow judge.

The function of the Judicial Council is different from that of the public inquiry; the former considers specific complaints about a provincial judge, while the latter considers whether in all the circumstances that judge should remain in office. A very crude analogy might be made to the preliminary inquiry and the actual trial in relation to a criminal charge.

During the course of the Inquiry, counsel on behalf of Judge Hryciuk objected to the fact that the Commission would hear other complaints in addition to the two matters that had been before Judicial Council. On September 15, 1993 Mr. McLean asked for the assurance that his client would only have to face the allegations of the witnesses known to that point in time. I responded to Mr. McLean at that time as follows:

“I’m not sure that Commission Counsel can give you that assurance, until such times as they have been in touch with those witnesses.

“I think that the only assurance that you can be given at this point in time is that full disclosure will be made. I have insisted on that, that when counsel know, the information will be conveyed to you.

“If it turns out as a result of those discussions, they learn that there may be another witness, then obviously that’s something that will have to be disclosed to you as well.

“But I’m not sure, at this point in time, that Commission Counsel can, nor do I think it appropriate, that I put limits on those inquiries at this point in time.

“This is a public inquiry and I feel duty-bound to consider all evidence if it is relevant.”

Mr. McLean: “I fully understand that, thank you.”

Commissioner: “But I want to ensure that you, on behalf of your client, have full and complete disclosure of any such evidence, and full and complete opportunity to respond to it, in such manner as you deem fit . . .

“And if you have any difficulties in terms of timing or anything else, I will expect you to bring them to my attention so that we can deal with them in this forum.”

When the Commission resumed sitting on September 30, 1993, the issue of jurisdiction to deal with complaints other than those that had been before Judicial Council, arose again. Mr. O’Connor raised that issue immediately on opening that day. He understood at that point in time from his discussions with counsel for Judge Hryciuk, that there was no objection to me hearing evidence of a new complaint that had come forward during the adjournment period. Mr. O’Connor also advised that counsel for the judge would be seeking to further adjourn the proceedings in light of this new complaint.

Mr. O’Connor said:

“As I have indicated, our position is, they ought to have an opportunity to fully respond; no question about that.”

Mr. Elkin in responding to Mr. O’Connor’s opening remarks said the following:

“I spoke with Mr. O’Connor this morning, and I may have misunderstood what he was talking about, but I don’t want to be seen here as consenting to these complaints coming forward in a sense that it is within your jurisdiction.

“I’m saying that there must be, at some point – there has to be somewhere or some point where this case – we know what the case is and we are prepared to meet it.

“I don’t want to, by any means, be put in a position that we cannot put

forward a motion at a later date, before we reconvene to talk about the principles of fairness and the constitutionality of continually further complaints being brought forward.

“We’re going to hear some evidence today which doesn’t have anything to do with these new complaints, but I don’t want to be in the position that I can’t bring forward a motion to say enough is enough . . .”

With respect to the further adjournment alluded to by Mr. O’Connor during opening that day Mr. Elkin had this to say:

“We can’t sit on these issues Friday or Monday. We may be able to start Monday afternoon or Tuesday. Judge Hryciuk and his family want this matter over with as quickly as possible.”

Following an adjournment, I made a ruling to the effect that I had jurisdiction to hear the new matter of complaint and although my preference was to adjourn only to Monday morning rather than to Monday afternoon or Tuesday as requested, I was prevailed upon by Mr. McLean, because of a prior commitment he had to adjourn to midday on the following Monday as had been requested.

There was no application made to me to state a case for the Divisional Court as the result of my ruling nor was there any further request for an adjournment by counsel for Judge Hryciuk. I have taken the time to set out these discussions in some detail because of certain disturbing comments made both by Mr. Elkin and Mr. McLean during their final submissions about the process of the inquiry.

Mr. McLean stated in part as follows:

“It’s obvious – it’s obvious that Judge Hryciuk is at a terrible, terrible disadvantage in attempting to defend the serious allegation brought forth almost two years later, when memories have dimmed and investigation is difficult without proper time to prepare a decent defence.”

and Mr. Elkin suggested that the lateness of the disclosure had him “. . . running around trying to investigate and prepare a defence to these allegations . . .”

On Thursday September 30, 1993, Commission Counsel informed the Commission about the three new complaints of which they’d been made aware during the adjournment. It is apparent from a review of the transcript of the proceedings of September 30, 1993, as well as the evidence of those three new complainants, being Kelly James and Judges Bovard and Knazen, that disclosure of those complaints was made to Judge Hryciuk’s counsel almost immediately after Commission Counsel became aware of them. The only request made for further adjournment by counsel on behalf of Judge Hryciuk was granted. If more time had been required to prepare their defence, Mr. Elkin and Mr. McLean had only to ask for it, as they were advised to do on September 15, 1993.

The Complaints

I propose now to deal with each of the matters of complaint in chronological order of occurrence.

Susan Lawson

Susan Lawson was called to the bar of the province of Ontario in the spring of 1987, whereupon she took a one-year position as a clerk to the Chief Judge of the then District Court of Ontario. Following that appointment, in February of 1988, she was appointed an Assistant Crown Attorney for the Judicial District of York until September of 1989, when she was appointed to the Crown Attorney's staff in the region of Halton. She remained in that position until February, 1992, when she took a position as legal counsel to the Victim Witness Assistance Program.

The incident involving Ms. Lawson occurred in Judge Hryciuk's chambers at Old City Hall on August 10, 1988. Ms. Lawson knew Judge Hryciuk only from having appeared in his court on a few occasions previously. On some of those occasions (prior to August 10, 1988), she said Judge Hryciuk would wink at her when she walked into his courtroom. Although it made her feel uncomfortable and uneasy she did nothing about it.

On the occasion in question Ms. Lawson had been prosecuting a list of cases before Judge Hryciuk. She was in the midst of trial on a particular matter in which Paul Layefsky was defence counsel when a recess was called and she and Mr. Layefsky were called into the judge's chambers. Ms. Lawson had never been called into a judge's chambers before, but she did not think it strange because she knew counsel went into judges' chambers from time to time. She also felt she had no choice about it and went. As she and Mr. Layefsky went into Judge Hryciuk's chambers, he was by his desk and his opening comment to them was:

"Mr. Layefsky and Ms. Lawson, you know I love you both dearly — Mr. Layefsky I love you in the professional sense of the word, and Ms. Lawson I love you in the lustful sense of the word."

Ms. Lawson described Judge Hryciuk as having a smug smile on his face as he made this comment. She was shocked, taken aback, felt helpless but said nothing, because as she put it "he was a judge, I don't know what I could have said to him." As Ms. Lawson explained, the judge was a person who had some power and authority over her and she knew she had to go back in and finish prosecuting a list in front of him and she did not want to have any kind of altercation. There was then a discussion concerning the case in progress during which a plea was worked out and within about five minutes the conversation concluded. Ms. Lawson and

Mr. Layefsky proceeded to leave Judge Hryciuk's chambers to return to the courtroom, with Mr. Layefsky leading the way. As Ms. Lawson was about to go through the door leading from the judge's chambers, Judge Hryciuk, while standing very close to her pointed to a light switch cover plate, which is marked Exhibit 10 in these proceedings, and said to her:

"Ms. Lawson, you can flick my switch anytime."

It is to be noted that the switch cover plate depicts the figure of a bespectacled male standing in front of a desk. There is a framed certificate on the wall behind and to the right of the figure and a figure holding a scale of justice to the left. The figure is holding a large book bearing the word "law" on its spine. The top half of the male figure is fully clothed in shirt, tie, vest and jacket while the bottom half is naked, with the trousers depicted down around the ankles. At the location on the figure where one would expect to find the male's penis, is a rectangular hole through which the switch is placed and is obviously intended to represent the male figure's penis.

Ms. Lawson testified that it hit her all at once what he was saying and she was terrified. She understood by his comment that he was referring to a man's penis. She described his demeanour at the time by saying he, (referring to Judge Hryciuk), was acting in a sly manner, as though he were making a pass at her and in a way that caused her to fear for her safety at the time. When asked how it was that she recalled the words used with such particularity, Ms. Lawson responded in the following language:

"It was an instance that had great impact on me. It really just hit me out of the blue, and it was like it knocked the wind out of me.

"I couldn't believe a judge was saying this to me, and I still remember the words. I don't think I'll ever forget what he said to me on that day.

"It caused me to take action in the courthouse, as well."

Again Ms. Lawson said nothing to Judge Hryciuk after this second comment, because, as she put it:

"I was scared of him. I was scared for my safety, and I was scared of him because he was a judge. I just wanted to get out of there. I didn't want to be there anymore. I just wanted to get away from there."

She left Judge Hryciuk's chambers and returned to the courtroom and finished the case. She reported the incidents to her supervising Crown, Mary Hall, either that day or the next and repeated the words that had been spoken to her. After a discussion with Ms. Hall it was determined that, except for continuing cases, Ms. Lawson would not again have to appear in Judge Hryciuk's court. If there were

cases that required her to be in his courtroom, she was to make sure she had a police officer with her at all times so she would never have to be alone with Judge Hryciuk. When asked what her reaction would be today if her duties required her to appear before Judge Hryciuk, she said she would not, and she would ask not to be put in his courtroom.

Paul Layefsky was not a helpful witness in terms of recalling the specific events of August 10, 1988. He had no specific recollection of those events, and in fairness to Mr. Layefsky he may well have already exited the judge's chambers when the second comment was made to Ms. Lawson and the switch cover pointed out to her.

Mary Hall confirmed that Susan Lawson had spoken to her in the summer of 1988 about the incidents with Judge Hryciuk and that thereafter, arrangements were put in place to minimize any contact between Ms. Lawson and Judge Hryciuk. She could not recall specifically a light switch plate being discussed, but did recall discussion about something that was displayed or on display in his chambers. She knew in times past when she had been in Judge Hryciuk's chambers herself, there had been "jokes" displayed on the walls of his chambers that she thought were in poor taste.

Judge Hryciuk cannot deny Susan Lawson's charges and admitted it. He does not specifically recall the incident, but says it is something he could or would have said. He says the comments, about loving Mr. Layefsky in the professional sense, while loving Ms. Lawson in the lustful sense, were meant only as a way of calming counsel who were engaged in a hotly disputed matter in his courtroom. He meant them only as a joke. He also admits he could have made the comment about "flicking his switch" in relation to the switch cover. He says he did not intend it to be sexual, although he now knows it could have been interpreted that way. Judge Hryciuk has admitted that up to a certain point in time he saw nothing wrong with making the type of comment he made to Susan Lawson.

I accept Susan Lawson's evidence unhesitatingly, and find that the incident in Judge Hryciuk's chambers on August 10, 1988 happened in the way she described it. I found her to be an impressive witness, thoughtful of, and careful in her answers. Ms. Lawson was emotional in giving her evidence.

I am urged, in less than veiled fashion, to accept that such an emotional reaction is out of all proportion in relation to the nature of the specific conduct which gave rise to her complaint. There has been the unfortunate suggestion in certain media accounts of Ms. Lawson's testimony that she is "fragile" and over-reacted to the offensive conduct. In addition of course, there was the further unfortunate remark of Judge Lauren Marshall about "wimps" and although Judge Marshall immediately recognized the impropriety of her remark and attempted to withdraw

it, the damage had been done. I found nothing at all unusual about Susan Lawson's reaction and her emotional state in the witness stand. She was required to speak of very difficult matters.

It is argued on behalf of Judge Hryciuk, that Ms. Lawson's complaint, at its worst, represents an error in judgment. He is guilty only of exercising his humour with someone he did not know well. He assumed, it is said, that she would take his comment or "joke" in the spirit in which it was intended and the worst that can be said about that, is that his judgment was in error.

Judge Hryciuk, by his comments, reacted to Mr. Layefsky as a professional while at the same moment reacting to Ms. Lawson as a woman. His comment about the switch plate could only be reasonably interpreted as sexually suggestive. His conduct was sexist, it was humiliating, it was demeaning and it was totally unprofessional and inappropriate. I ask rhetorically, how should she have reacted? She was required to discuss a very difficult and a very personal matter before a large public audience assembled in the hearing room and before a television camera. I suggest the prospect was a daunting one and I do not find anything at all unusual or out of the ordinary about Susan Lawson's reaction in recounting those events some five years later.

Malka Goldenberg

Ms. Goldenberg was called to the bar of Ontario in 1989 and began employment as an Assistant Crown Attorney in Brampton, Ontario in October, 1989.

She appeared before Judge Hryciuk for the first time shortly thereafter, during her first week in conducting her own trial court. While she was in court dealing with cases she found Judge Hryciuk to be very helpful to her as a new Crown. At the end of the day, after the cases had been finished and the judge had left the courtroom the clerk told her that Judge Hryciuk wished to see her in chambers. Being a very new Crown at the time, she recalled that she didn't know what to do or whether to go into a judge's chambers. She finally reasoned that since it was at the end of the day and the cases were finished there was no reason not to. She assumed because Judge Hryciuk was a visiting judge he wouldn't have chambers so she was not quite sure where it was she was being asked to go. In any event she went through the doorway that led to a hallway behind the courtroom where she found Judge Hryciuk. He had removed his robes but was still wearing his waistcoat and tabs. He stood with one foot raised on a small ledge, his elbow resting on his knee and with a smile on his face said: "Welcome to my chambers." At that point, Judge Hryciuk took her hand in what she said was probably a handshake: she could not recall how the incident had been initiated, but assumed it was a gesture

of introduction. She described him as holding her hand with one of his hands while he shook that hand with his other hand — a double handshake as she described it. While holding her hand he discussed with her how he did not like coming to Peel Region, he complimented her on the job she had done, and gave her some procedural pointers. During the conversation, he continually held onto her hand with his right hand and either held her hand with his other hand or moved that other hand up her arm and held her arm as he continued to talk to her. She said it wasn't just an isolated handshake and that he kept on holding onto her hand and her arm. The conversation lasted a handful of minutes, but Ms. Goldenberg had no distinct recollection how it had ended.

Ms. Goldenberg described her reaction at the time as being very shocked and uncomfortable. She had very little experience at all to that point in dealing with judges. She was, she said, to a certain extent frozen and did not know how to respond and because of that she said nothing to him at the time. She was intimidated by him. When asked why the situation was intimidating for her she responded:

“I felt that His Honour, my feelings about any judge are that they have a certain amount of power over me, authority over me. I just didn't feel it was my place to say anything. I didn't have the courage at the time.”

After this incident, however, Ms. Goldenberg resolved she would never again go into chambers with Judge Hryciuk.

Judge Hryciuk does not deny this incident occurred except with respect to the characterization of his handshake as anything other than simply a double-handed handshake. He customarily shook hands using both hands.

There is little discrepancy in the evidence between Ms. Goldenberg and Judge Hryciuk other than the description of the handshake. She describes it as lasting an inordinate length of time, accompanied by the movement of Judge Hryciuk's other hand up and down her right forearm. It was no ordinary handshake to her and made her feel uncomfortable. Judge Hryciuk says it was just his usual two-handed handshake which he demonstrated in the hearing room. That handshake was not accompanied by any up and down movement on the forearm.

Throughout these proceedings, Judge Hryciuk has been described as a “touchy” person who customarily hugs, kisses and pats his friends and acquaintances. I find the type of handshake described by Ms. Goldenberg as entirely consistent with the way Judge Hryciuk has been described by many witnesses. She would have every reason to remember the particular handshake because it was one which made her feel very uncomfortable. Judge Hryciuk thought there was nothing unusual about it and on his evidence intended nothing by it.

Judge Hryciuk said he did not know that he had made Ms. Goldenberg feel uncomfortable, as he put it, she did not indicate to him she was in any degree of discomfort. Having heard her evidence he did not think it regrettable that his conduct had caused her to feel uncomfortable. There was nothing whatsoever about her evidence he said, that caused him any concern.

Mr. Elkin, on behalf of Judge Hryciuk, dismisses Ms. Goldenberg's complaint as "nonsense." I cannot agree. A handshake is a normal social physical response most of us engage in daily, whether it be a single- or double-handed handshake. It is normal acceptable social conduct, at which no reasonable person would take offence. When that conduct goes beyond what might be considered a normal or usual handshake, it may, depending on the circumstances, become objectionable. What Malka Goldenberg described was not a normal or usual handshake as most of us know it. Malka Goldenberg was not someone he knew well or indeed at all; he met her for the first time when she appeared in his courtroom that day.

Judge Joseph Bovard

Judge Bovard is married to Kelly James, another of the complainants, and whose evidence I shall discuss later in this report. Judge Bovard was called to the bar of Ontario in 1978 and after nine months as a duty counsel entered the private practice of law doing criminal defence and immigration work until 1982. He then went to Baffin Island to work with the Inuit people. He was a director of a legal services centre there, at what used to be called Frobisher Bay, and is now Iqaluit. During this time, he was retained by the Northwest Territories government to do all legal aid defence work in the Eastern Arctic. He remained there for four years. He then spent a year in France studying French language, literature and history, after which he returned to Canada and was employed by the Ministry of the Attorney General in the Policy Development section. On December 31, 1989, he was appointed to the Provincial Court Bench, Criminal Division. For the first two years following his appointment, Judge Bovard sat in the Provincial Court in Scarborough; since January 1991, he has been sitting at the Old City Hall in downtown Toronto.

Very soon after his appointment, but before going to Scarborough, Judge Bovard put in an internship or training period at Old City Hall. During this time period, either in January or February of 1990, he had occasion to be in the judges' common room one morning before court and noticed Judge June Bernhard standing in the middle of the common room. As he stood there looking at her he observed Judge Hryciuk approach Judge Bernhard from behind, reach out with his right hand and grab her right buttock. He said he was shocked and stunned:

he was only fifteen or twenty feet away. He said Judge Bernhard just sort of looked to her right and made a shrugging motion. There were others in the common room at the time, but Judge Bovard could not remember who they were and was not aware as to whether or not any of those other persons observed the incident. Neither Judge Bernhard nor Judge Hryciuk said anything. Judge Bovard said nothing at the time and when asked why he had not, responded this way:

“I was shocked. I didn’t know what to say. I had just been appointed. I didn’t know any of the individuals in that common room on a personal basis.

“I was still somewhat in awe of even being there, and I was at a complete loss as to what to do. I certainly didn’t want to make any waves. I was scared to be looked upon as some kind of troublemaker. I was stunned.

“That is the last thing that I expected to see happen in a judges’ common room. As I say, I was scared. I didn’t want to make trouble. I didn’t want to be ostracized. So, I didn’t say anything.”

Judge Bovard did not come forward with his complaint until sometime after Kelly James did. It was only after he had been informed that counsel on behalf of Judge Hryciuk were alleging recent fabrication in relation to his wife’s complaint that he knew he would have to reveal what he knew. He knew then he would be called to testify to the fact that his wife had revealed to him much earlier the incident she had with Judge Hryciuk. He reasonably expected that while he was on the witness stand he may be asked about any other information of which he might be aware that would be relevant to the issue before the inquiry. It was at that point that he revealed what he knew to Commission Counsel.

Judge Hryciuk flatly denies the incident took place. He says:

“I have never, ever, ever touched June Bernhard’s buttocks, ever, nor would I.”

He appeared almost to take offence at the very suggestion and his reaction appeared to me to be somewhat feigned in that it was not in keeping with the nature and character of the man described by witnesses over and over as having a bawdy sense of humour and who himself admitted during cross-examination that he was reckless with his sexual humour.

About that same incident Judge Bernhard had the following to say about the incident:

“No, I don’t recall it and it never happened.”

There is no other independent evidence bearing on the issue. Counsel for Judge Hryciuk when cross-examining Judge Bovard, asked him a series of questions as follows:

- Q: Would you agree with me, sir, that Judge Hryciuk is kind of a fun-loving, gregarious man?
- Q: Would you agree with me that Judge Bernhard and Judge Hryciuk were often joking around, playing around together in the judges' common room ? . . .
- Q: What happens, sir, if this is the way they played around all the time? What happens if this happened every day or every other day, that this was their way of joking around with each other?

In view of the line of questioning, I was rather surprised to hear both Judge Bernhard and Judge Hryciuk simply deny the incident. I would assume that counsel would not ask that type of question unless he intended to call the evidence to support it in face of the witnesses' denial. He did not. Obviously this line of questioning was most improper and equally obviously the questions are not evidence. A trier of fact is entitled to assume that responsible counsel would not ask such questions unless there was justification for them.

I observed Judge Bovard very carefully as he gave his evidence. It was obvious from watching him and listening to what he had to say, that testifying before the Commission was very difficult for him. He said it was the hardest thing he has ever had to do. He agonized over his decision. With all the attendant publicity, he worried about the effect his giving evidence might have for his children who might be teased by other children. He worried about the alienation he would experience as the result of testifying from other judges, lawyers and other persons engaged in the administration of justice who were supporters of Judge Hryciuk. Indeed, he said he had already begun to experience some of it at Old City Hall where rumours had begun to circulate about his proposed evidence even before he testified. He feared that he may have to spend his entire judicial career in that kind of atmosphere and he is a relatively young man. He had considered these matters at an earlier time, when the hearing was taking place before Judicial Council. He determined not to come forward at that time because any advantage for him in coming forward then was far outweighed by the disadvantages. He only came forward as stated earlier, because his evidence was required to refute the allegation that his wife's complaint was recently fabricated.

Judge Hryciuk was unable to suggest any reason why Judge Bovard would come forward with a false allegation against him.

I found Judge Bernhard's evidence less than convincing. Her answer was out of her almost before the question finished. She said firstly that she "didn't recall" any such incident, and that secondly, it "never happened." I have some difficulty following the logic. Either it may have happened and she doesn't recall it, or it never happened, it cannot be both.

I found Judge Bovard to be a convincing witness; he gave his evidence in a clear and compelling fashion, and I accept his evidence over that of Judge Bernard and Judge Hryciuk. I find that the incident in the judges' common room described by Judge Bovard in his evidence occurred as he described it. Moreover it is entirely in keeping and consistent with the overwhelming preponderance of evidence which I have heard throughout this proceeding about Judge Hryciuk's bawdy sense of humour and touchy-feely nature.

Judge Brent Knazen

Judge Knazen was called to the bar of Ontario in 1977. He practised law in the fields of immigration, labour and criminal law prior to his appointment to the Provincial Court bench on August 15, 1990. He currently sits at Old City Hall and has since the time of his appointment.

In the fall of 1990, shortly after his appointment, Judge Knazen observed an incident in the judges' common room at Old City Hall. Judge Bernhard was attempting to manoeuvre between a table and a chair upon which Judge Hryciuk was sitting. Because the space between the two objects was narrow, she had to turn sideways to get through it and in so doing, came right in front of Judge Hryciuk. Judge Hryciuk stood up and thrust his pelvis toward the back of Judge Bernhard as though simulating a sexual act, and made a comment about "Junie liking it from the back," or something similar. Judge Bernhard did not react except "maybe a little nervous giggle that's particular to her." When asked if he had observed Judge Hryciuk do anything else after he made the statement to Judge Bernhard, Judge Knazen replied:

"No. He was — he's jolly. He was just his old, usual, jolly self."

There were other judges in the common room at the time the incident took place, but Judge Knazen could not remember who they were. The entire incident took place almost in front of Judge Knazen, who said nothing to Judge Bernhard, nor to Judge Hryciuk at the time. When asked why he had said nothing, he responded in this fashion:

A: At first I just took it in. I found it unbelievable, one judge to another in the common room, and I thought about it a lot, and often, and it was very soon after I was a judge.

In early July I had appeared in that court. I didn't feel like a judge yet, even though I was a judge, and sitting with them. It was their turf. They knew each other. They'd been there for ten years.

I couldn't find the right way to go, even though I thought about it a lot, I didn't feel on very solid ground.

Q: Did witnessing the incident have an impact upon you?

A: I couldn't believe this had happened in the judges' common room, and I perceived that Judge Hryciuk wasn't acting properly in the common room. So, that was the impact of that incident.

Judge Knazen testified voluntarily, although under subpoena. He had been reluctant to get involved. He was contacted at the time of the Judicial Council hearing, but declined to testify on that occasion. It was apparent to anyone watching Judge Knazen testify, that he found it a very difficult and decidedly unpleasant experience.

He had some time in the past, discussed this incident with Judge Bovard. It was only after a what he described as "very contentious phone call," from Judge Bovard that Judge Bovard was able to convince him to come forward and reveal the incident he had observed.

Judge Knazen was cross-examined by counsel for Judge Hryciuk about his knowledge of the relationship between Judge Hryciuk and Judge Bernhard. While he was not as specifically questioned as was Judge Bovard, nevertheless, it was suggested that the two knew each other well and were accustomed to joking and bantering back and forth one with the other. Judge Knazen agreed with counsel's suggestion that Judge Hryciuk's conduct on that occasion was obviously intended as a joke and that one possible interpretation of Judge Bernhard's reaction to it was ". . . sort of that's Wally . . ."

After he received his subpoena Judge Knazen went to see Judge Bernhard as a matter of courtesy, to tell her he had been subpoenaed. The conversation they had at the time bears repeating:

Q: And what did she say?

A: She had also been subpoenaed and had received a statement, and she fumbled for it. She referred to two statements, and then she said, "I don't know which one you're saying. One of them never happened, and one I can't recall." She said, "Is yours in the" – and we talked a bit about this, not about the incident, about being subpoenaed, and she said, "Is yours in the common room?"

Q: Yes?

A: And I said – yes.

Q: Yes?

A: She said, "It never happened."

Q: And you know the statement that she's referring to — don't you? — that never happened? That's something that Mr. Bovard alleges.

A: Well, I thought since she asked me, "Did yours happen in the common room?", I thought she was telling me, "Yours never happened."

Q: Oh, I see.

A: That was the first time I realized someone might say I wasn't telling the truth, so I left her very politely.

Q: You didn't say anything more about it?

A: No.

Judge Hryciuk absolutely denies this incident ever occurred. When asked what he had to say about Judge Knazen's evidence he said about the incident described:

A: It didn't happen Mr. McLean. Not only did it not happen, but I've indicated to you the respect that I hold for Judge Bernhard. There's no way.

Q: It's further stated that, on the same occasion, that you made some sort of lewd remark while behind Judge Bernhard; you heard what the remark was?

A: I heard it.

Q: I won't repeat it. What do you say about that allegation?

A: It never happened. I won't say —

Q: I'm sorry?

A: He's mistaken. Let's put it that way. I wouldn't call a fellow judge what I should.

When Commission Counsel asked Judge Bernhard about the incident Judge Knazen had observed the following exchange took place:

Q: Do you recall an incident in the judges' common room when you were walking between a table and a chair bending over slightly and Judge Hryciuk got up behind you and moved his pelvis in and out and said something to you about "liking it from the back, June?"

A: Well, first of all, I cannot see behind me, and second of all, I do not recall it, and it's unlikely it occurred. But I don't know what's going on behind myself.

Q: You have no recollection of that?

A: No.

Clearly the most that can be taken from Judge Bernhard's evidence, is that if such an incident took place, she doesn't recall it. Judge Hryciuk again simply denies the incident ever occurred. It is implicit from his evidence that it is his position that Judge Knazen's evidence is complete fabrication. Judge Hryciuk can suggest no reason why Judge Knazen would want to come forward and make a scandalous allegation against him. Judge Hryciuk's attitude and reaction toward this complaint is similar to those he had in relation to Judge Bovard's complaint. He very clearly indicated by his attitude and choice of language that he took offence to the very suggestion that he would engage in this type of conduct. I find that very difficult to accept and one of the reasons why I do not find Judge Hryciuk to be a credible witness in relation to the Bovard and Knazen incidents. Many witnesses testified that Judge Hryciuk has a bawdy sense of humour and is a "touchy-feely" kind of fellow. He himself testified that it was not unusual for him to make comments to women that had sexual overtones or were, as he saw them, of a humorous and sexually suggestive nature. The fact that as such a person, he would appear to take umbrage at the very suggestion that he would engage in the type of conduct described by the witnesses in relation to Judge Bernhard, causes me to doubt his sincerity. As indicated earlier Judge Knazen was also questioned by counsel on behalf of Judge Hryciuk in a manner that seemed to suggest that for all Judge Knazen knew this was the way Judges Bernhard and Hryciuk commonly joked with one another. Certainly Judge Knazen wasn't questioned as carefully as was Judge Bovard in this respect but the intent was nevertheless clear. Once again I was somewhat surprised when Judge Hryciuk simply denied the incidents ever took place in view of his counsel's cross-examination. Certainly the questions asked during those cross-examinations are not evidence and I do not treat them as such, but I mention it only because I found it curious.

I accept Judge Knazen's evidence and find that the incident described by him occurred as he described it. He has absolutely no motivation to lie, on the evidence, and there can only be much disadvantage to him coming forward as he did. It was obvious to me that he would have preferred to have been almost anywhere else than this witness box. He gave his evidence in a very careful fashion and contemplated his answers before giving them; I found him to be a credible witness.

Marilyn Bartlett

Ms. Bartlett was called to the bar of Ontario in 1980. During the years 1980-81 she was a law clerk to the High Court of Justice of what was then, the Supreme Court of Ontario. Following that appointment she was in private practice with a firm in Toronto for two years and at the Ontario Legal Aid Plan for a year and a half thereafter in 1984 she was appointed an Assistant Crown Attorney in Brampton where she has remained since.

In the fall of 1991 Ms. Bartlett became involved in the Brampton Blitz Court Project which brought Judges Gonet and Hryciuk to Brampton to help with the case backlog experienced in that jurisdiction. Prior to being assigned to the Blitz Court for the months of October, November and December in 1991, Ms. Bartlett had appeared before Judge Hryciuk on only perhaps two or three occasions when he would occasionally sit in Brampton, as a visiting judge.

On either the first or second day that she appeared in his court (at the commencement of the Blitz Court), at the end of the day Judge Hryciuk asked her to step into the back hall behind the courtroom. She did as she was requested. Once in the hallway Judge Hryciuk leaned toward her, grabbed her wrist and said "How would you like to have dinner with me next Wednesday?" She was flustered and taken aback. She said it sounded like a proposition to her and she was surprised. She thought she probably responded with something like "— what do you mean?" At which point Judge Hryciuk began to laugh and said ". . . with me and sixteen other people." He laughed and then went on to explain that he and Judge Gonet had organized this dinner for those involved in the Blitz Project. Judge Hryciuk's comment at the time it was said made her feel very uncomfortable. Judge Hryciuk recalled the incident and said only that he meant to be humorous and that at the time Marilyn Bartlett had laughed.

On another occasion while she was in Judge Hryciuk's court she overheard a comment he made to the court reporter assigned to his courtroom. There were four people in the courtroom at the time, Ms. Bartlett, the reporter Ms. Wojcik, the court clerk Janet Beneteau and of course Judge Hryciuk. Judge Hryciuk turned toward the reporter and asked her if she worked by the hour or was on salary. Ms. Wojcik responded that she worked by the hour at which Judge Hryciuk responded: "Well, how would you like to spare half an hour of your time with me at 4:30 this afternoon after court?" Ms. Bartlett said that the manner in which he made the comment was such that it had a sexual connotation. His tone left Ms. Bartlett with the impression that he was making a sexual proposition. He then laughed. Ms. Bartlett thought the comment inappropriate. Ms. Wojcik could remember nothing of the comment. In cross-examination Ms. Wojcik said that commonly if judges wished to sit late to finish a list for example they might ask

her if she objected to working later. Ms. Beneteau recalled Ms. Bartlett commenting to her after Judge Hryciuk had left the courtroom that the remark had gone right over Ms. Wojcik's head. Ms. Beneteau thought to herself that she too must be stupid because nothing had been said which caused her to take offence. Judge Hryciuk could recall nothing of the incident but said that he is considerate of court reporters and may have asked if she minded staying later or was able to stay later.

On yet another occasion when Ms. Bartlett was in Judge Hryciuk's courtroom she witnessed a comment he made to a woman duty counsel, Susan Black. Ms. Black as duty counsel had been paged to the courtroom and when she arrived in the courtroom was asked whether she had information about a particular accused. She responded that she did not think she had any information to offer that would be of assistance to the court. In response to Ms. Black, Judge Hryciuk responded: "How about your phone number?" Ms. Bartlett said it was a joking comment, intended to be funny. She thought it was inappropriate and made her feel uncomfortable. Ms. Black thought the remark was funny and was not offended. Judge Hryciuk says he meant the comment only as a joke.

Ms. Bartlett did nothing about the comments, she decided to ignore them. She said she had been assigned to that court as one of two Crowns primarily responsible for that court. She said it was not going to work if she was unable to get along with the judges involved and Judge Hryciuk was one of the judges. She chose to ignore those kinds of remarks and simply do her job.

Each of these incidents are essentially admitted by Judge Hryciuk, he simply puts a different connotation on the remarks and comments than did Ms. Bartlett.

There is no suggestion that in making the comments he did, and which comments are now the subject of complaint, that Judge Hryciuk deliberately set out to offend anyone. He was attempting to be humorous.

His remark to Ms. Bartlett was made in a tone and in a manner that caused her to think he was making a pass at her and that apparently was what he intended. He did nothing to clarify what he'd said until she reacted in such a way as to show her discomfort — then he laughed and completed his dinner invitation to include sixteen others. The remark was sexist and it was inappropriate.

The other comments to the court reporter and to Ms. Black were overheard by Ms. Bartlett and made her uncomfortable. Both of those comments were made in the courtroom. While Judge Hryciuk does not specifically recall the comment to Ms. Wojcik, he suggests perhaps he was just being solicitous and inquiring if it would be an inconvenience for her to sit late that evening, if necessary. His suggestion is unlikely in that the comment was made just before the noon break.

The remark and the manner in which it was made as described by Ms. Bartlett is consistent with Judge Hryciuk's humour and his admission that it was not unusual for him to make comments to women that had sexual overtones or were, as he saw them, of a humorous sexually suggestive nature.

And while Ms. Black may not have been offended when Judge Hryciuk jokingly asked for her telephone number in the courtroom, it certainly would have had the effect of demeaning her in the eyes of others present in the courtroom. It singled her out as a woman rather than simply a professional there to do her job. His remark was inappropriate and unprofessional.

It is argued on behalf of Judge Hryciuk, that it would make life very difficult if we have to consider the effect our remarks may have on others who may overhear them. Judge Hryciuk said in his evidence that it was not his view that he should be sensitive to those persons who may overhear his comments.

A judge occupies a special and privileged place in our society. If he makes remarks which are derogatory in nature, be they sexist, racist or whatever, the effect on those persons who hear such remarks will be such as to diminish their esteem for the judiciary. The reputation of an individual judge will reflect on the entire judicial system.

Dale Lumb

Dale Lumb is a court reporter in the Judicial District of Peel and has been for seven and one-half years. She has reported for a variety of courts including the Provincial Division Courts at Clarence Street in Brampton.

Dale Lumb did not directly make any complaint against Judge Hryciuk. Her name was mentioned in the context of another witness, Lesley Baldwin. Ms. Baldwin had testified that when she was in the washroom at the Brampton court staff Christmas party several women had come to her to complain about Judge Hryciuk's conduct that evening. Ms. Lumb was one of the women mentioned by Ms. Baldwin. That party was on November 23, 1991. Ms. Lumb recalled speaking to Ms. Baldwin that evening but could not recall what about.

In any event, Ms. Lumb had been wearing a very short black dress with a "V" back from shoulders to waist. The dress left her entire back essentially bare. During a slow dance with Judge Hryciuk his hand slipped under her dress. Ms. Lumb asked Judge Hryciuk to move his hand and he did so. She claimed the incident had no effect on her and as she put it "whatever happened at the time was forgotten at the time." I pause only to comment that the only way Ms. Baldwin could have known of the incident, short of observing it herself was to be told of it by

Ms. Lumb or someone she had told. The fact that she mentioned this incident at all to anyone suggests to me that at the time Ms. Lumb perhaps considered it a little more serious than she would have me believe now. She was very obviously most uncomfortable testifying. If Judge Hryciuk's hand had slipped under her dress in the course of dancing merely accidentally, one wonders why he did not immediately remove it on his own rather than having to be asked to do so.

Suzanne McKenzie

Ms. McKenzie, who is also known as Suzanne McTavish, is the trial coordinator of the Ontario Court (Provincial Division) at Brampton, a position she has held since July of 1991.

She too, was at the Brampton court staff Christmas party in 1991. Ms. McKenzie like Ms. Lumb made no complaint directly about Judge Hryciuk, but her name was also mentioned by Ms. Baldwin as being one of the women who complained to her about Judge Hryciuk's conduct that evening.

During a slow dance with Judge Hryciuk that evening his hand slid from her back to her lower back just above her buttocks. She said she did not feel comfortable with where his hand was and she moved it up and said: "No, please don't" at which point Judge Hryciuk stopped.

Judge Hryciuk dealt with the evidence of Ms. Lumb and Ms. McKenzie only very peripherally when he told Mr. O'Connor that it had not been a problem for him over the years when dancing with women other than his wife, that sometimes his hand would go somewhere where the women would ask it to be moved. I find therefor that these incidents occurred as described.

Kelly James

Ms. James is twenty-seven years of age and was until September of 1993 a court reporter who worked regularly at the Provincial Court at the East Mall Court location. To that point in time she had been a court reporter for some four years, sometimes working for an agency, sometimes freelancing. She first worked at the East Mall just before the Christmas holidays in 1990. In July 1993 she was married to Judge Joseph Bovard.

Prior to the East Mall Christmas party in 1991, Ms. James had been the court reporter in Judge Hryciuk's courtroom perhaps ten times. She knew him only from having worked in his courtroom; she had never had anything to do with him outside the courtroom.

The Christmas party was held just before Christmas in late December at the Swan Club in Etobicoke. She went to the party with another reporter, her friend and co-worker, Angie Capobianco. Ms. James recalled that she and Angie arrived at the party just as dinner was being served. She recalled being greeted on arrival by Messrs. Haruk and Curley, being shown to a table, greeting those at her table and one next to it and then proceeding with Angie to the washroom.

The washroom was located down a hallway which led off the northwest side of the large room in which the party was taking place and where the tables were set up and the bar and dance floor located. As she proceeded down this hallway leading to the washroom, she saw Judge Hryciuk leaning against the wall talking to another man who she knew from an earlier Christmas party was the date of one of the freelance reporters. She walked over to Judge Hryciuk with her right hand extended, wished him a Merry Christmas and went to give him a kiss on the cheek. Judge Hryciuk shook her hand, straightened up slightly and as she leaned to kiss him on the cheek he said to her "Give me a big Christmas hug" pulling her toward him. She fell into his chest and as she did so his left hand came around and grasped her buttock. He let go of her right hand which he had been shaking and brought his right hand around and grasped her other buttock, squeezing both and brought her forward with such force that one of the fingers of his left hand slightly penetrated her vagina. The entire incident lasted only a few seconds before they separated. She said she was shocked and that she just stood there and looked at him and then turned and continued on to the washroom. She said nothing to Judge Hryciuk at the time. She assumed Angie was still beside her to her left when this incident took place. At the time she was wearing a full-length black dress with a matching bolero jacket which was Exhibit 13 in these proceedings. I put little reliance on the evidence of other witnesses who suggested Ms. James perhaps wore something other than the dress she said she did. The evidence of those other witnesses was at best vague. Most of them had no reason to even cast their minds back to that question until very recently. I can't imagine that any of them would have had any particular reason to recall what Ms. James had been wearing. In addition she wore two-inch heels. She wore no underwear that evening on doctor's orders that she avoid wearing underwear whenever possible because of a problem she had with continuing yeast infections.

Once in the washroom she testified that she said to Angie: "Did you see how he grabbed my ass? I have a wet spot on my dress." She said she knew she had a wet spot on her dress because she could feel it against her body and assumed it had been caused when Judge Hryciuk's finger penetrated her vagina. She said Angie's response was: "You're kidding" and "What do you expect, he's a man." Thereafter when she and Angie left the washroom to return to their table Judge Hryciuk called to her: "Not wearing any underwear tonight, are you Kell?"

Angie Capobianco has no recollection of going to the washroom with Kelly James that evening at all, or of seeing Judge Hryciuk and Kelly James together that evening other than when they were dancing. She says if Kelly James had told her what she says she did about Judge Hryciuk, she doubts she would have responded to Kelly in the off-handed way Kelly James says she did. She would, she says, have taken it more seriously. When Ms. Capobianco was cross-examined, in particular by Mr. Struthers, it became rather strikingly apparent that she had very little recollection of the details of the evening in question at all. She was angry with Kelly James for having placed her in the — as she phrased it “. . . in the midst of this . . .” She said she would have expected a friend “. . . if they felt so strongly about something such as this and would expect that I would corroborate the allegations in some way, that I would have been contacted . . .”

Marc Pawlyshyn as it turns out was the man Kelly James says was talking to Judge Hryciuk when this incident took place. It was through information supplied by Ms. James that he was identified and located by Commission Counsel. He admits he spoke to Judge Hryciuk in the hallway where Kelly James says she saw him but he says the conversation took place after dinner rather than before. He knew very few people at the party although he'd met Kelly James at an earlier Christmas party so knew her to see. He had no recollection of the incident described by Ms. James. Judge Hryciuk had been a school friend of Mr. Pawlyshyn's father and he was bringing Judge Hryciuk up to date about his father before Judge Hryciuk left him to attend to other duties. Mr. Pawlyshyn agreed with the suggestion put to him by Mr. Elkin that it would be difficult for anyone to remember who they ran into and who they talked to at a party two years earlier. He thought it likely, however, that if he'd seen Judge Hryciuk grab a woman by the buttocks he'd have remembered that.

Fred Fedorsen spent about forty minutes before dinner in the hallway leading to the washrooms with Judge Hryciuk. During the entire time they were smoking cigarettes and drinking beer. During this time a number of people came by and greeted Judge Hryciuk some with a hug and a kiss; he didn't remember Kelly James being one of them. He left Judge Hryciuk just as dinner was about to be served and did not see him again that evening.

Patrick Morris claims to have seen Judge Hryciuk give Kelly James a hug and a kiss on the cheek at which time the judge had a cigarette in one hand and a beer in the other. The incident took place not in the washroom hallway, but rather in the main hall near the bar. It was before dinner and Angie was with Kelly. Unfortunately, Mr. Morris' evidence was of little assistance to me and I would be very loath to rely on anything he said. He mentioned absolutely nothing about his observation of this incident in his statement of anticipated evidence supplied to

Commission Counsel in accordance with the disclosure requirements of the Commission. It was obvious he was a very partisan witness favoring Judge Hryciuk and said he was very angry after hearing a radio report that Kelly James had made a complaint. It was also apparent that Mr. Morris had discussed his evidence with other employees at the East Mall Courthouse on a number of occasions and had been present a number of times when others were discussing the case and expressing their views. Any suggestion by him that he was not a party to those discussions is simply incapable of belief. It is impossible for me to determine what Mr. Morris actually recalls and what he was merely repeating because he'd heard others say it. I cannot accept his evidence or any part of it.

The second incident described by Ms. James involving Judge Hryciuk on that same evening occurred while she was dancing with him later on in the evening. He asked her to dance by coming up behind her and simply taking her hand and pulling her to her feet as he did so. She did not even realize it was him until after she was already on her feet. As they began to dance she said Judge Hryciuk pressed her back with his hand and caused her breasts to rub up against his chest. He then began to grind his penis against her pelvis; he had an erection and said to her “. . . that ain't a roll of quarters you're feeling there” and either “baby” or “sweetheart” and later “. . . yeah, that ain't a roll of lifesavers you're feeling there.” She tried dancing a little faster while this was going on. She just wanted to get it over with and was disgusted. She did not ask him to stop because he was a judge and she didn't want to upset him. She explained that being a freelance reporter she had no job security and she feared that if she made waves she may find that she no longer had work. She did not dance with him again that evening. She returned to her table after the dance and told Frank Curley what had happened to her on the dance floor and earlier in the washroom hallway. In addition to Frank Curley, Ms. James later told Arthur Stern, Frank Gabriel, David Fisher and her husband about these incidents with Judge Hryciuk. Both David Fisher and Judge Bovard testified that Kelly James had told them about the incidents with Judge Hryciuk on earlier occasions. Mr. Fisher did not think he had been told specific details. In the course of a discussion about the two matters pending before Judicial Council she told him that Judge Hryciuk had done a lot worse to her.

Judge Bovard said that Ms. James had related the details of the incidents to him about two weeks after they began dating in March 1993. None of the others mentioned were called and Commission Counsel stated that he did not intend to call the others mentioned on the record but offered to assist with subpoenas or in any other way if counsel for Judge Hryciuk wished to call the others as witnesses.

Other witnesses claimed to recall having seen Ms. James dance a number of times with Judge Hryciuk during the evening and appear to be having a good time. Mr. Haruk even suggested that Ms. James had kissed Judge Hryciuk goodbye

as the party ended sometime after 1 a.m. When cross-examined, however, it was apparent that Mr. Haruk's evidence at its highest was nothing more than speculation and had no basis in fact.

I have very grave concerns about the evidence given by many of the employees of the East Mall courthouse. Every one of them were strong supporters of Judge Hryciuk and I do not criticize them for that. It is perfectly understandable that they would support the man they had worked with over the years and of whom they were obviously very fond. Their evidence, however, was less than impartial. The complaints against Judge Hryciuk have been one of the main topics for discussion at that institution since the spring of 1992.

Mr. Haruk's evidence is illustrative of my point. He believed Kelly James had kissed Judge Hryciuk good night at the end of the evening. The point of such evidence being obviously, that if the incidents she has accused Judge Hryciuk of had actually occurred, it is most unlikely she would have been so friendly with him at the party's end. In keeping with the rules of procedure established for the Commission, counsel for Judge Hryciuk had provided a brief synopsis of Mr. Haruk's proposed testimony to Commission Counsel by way of disclosure. Nowhere in that document was there any mention made of Ms. James kissing or hugging Judge Hryciuk at the end of the evening. He said he did not recall that evidence when he first spoke to Judge Hryciuk's counsel but that since that time he had many discussions with others at the courthouse about Kelly James' complaint. Those discussions were generally supportive of Judge Hryciuk and it was only after those discussions had taken place that he gave the evidence quoted above. I was left with the distinct impression that I could not be sure what Mr. Haruk had actually observed and independently recalled and what he was repeating merely because he'd heard someone else say it in the many discussions he'd participated in and overheard. In the circumstances, I thought his evidence quite unreliable. Louise Mitchell and Santa Marchese also said they had observed Kelly James dancing with Judge Hryciuk on more than one occasion during the evening. I make the same observation about their testimony in relation to the discussions they've had about these matters with others as I did in relation to the evidence of Mr. Haruk and Mr. Morris.

In fairness to these witnesses they had absolutely no reason to recall the details of that particular Christmas party until almost two years after the event when they learned of Kelly James' accusations. It is perfectly understandable that their memories would fade over time. It is also only human nature that a subject such as this would be the topic of many discussions at the courthouse. People with only the very best of intentions trying to help one another recall details of an evening long ago forgotten. The difficulty is that as the result of those discussions the evidence of those persons becomes tainted because a trier of fact is left not knowing

how much the witness recalls from his/her own observation and how much is a repeat of the observations of others. The result being that such evidence is, in my view, unreliable.

Toward the end of 1992, Kelly James became involved in organizing the annual Christmas party for the East Mall staff. By then the Judicial Council hearing in relation to the complaints against Judge Hryciuk had taken place. The response for tickets was less than expected because the judges were apparently boycotting the party that year in support of their colleague. Ms. James volunteered to try to sell tickets.

Judge Couto testified about the conversation he'd had with Ms. James when she attempted to sell a ticket to him. He explained to her that he did not want to go to the party because of the Hryciuk matter to which she responded: "Oh your Honour that's totally ridiculous." He took her comment to mean that she thought the complaints against Judge Hryciuk were totally ridiculous or without foundation. The obvious point being it was not the type of comment she would make had she been assaulted by Judge Hryciuk in the manner she has suggested.

Pauline Hunt has been a court reporter at the East Mall since 1982 or 1983. She too was involved in the organization of the 1992 Christmas party and related a discussion she had with Kelly James. She said Ms. James had reported to her that she was having trouble selling tickets to the judges and intended to speak to them to see what was wrong. Afterwards Ms. James reported back to Ms. Hunt that she had told Judge Belobradic ". . . this is so ridiculous, what's happening with Judge Hryciuk. He must realize this. Why are you so scared to come to the Christmas party? Everybody is so scared to come and I'm having trouble selling tickets." Ms. Hunt interpreted from her remarks that Kelly James was supporting Judge Hryciuk. She claimed Ms. James indicated she thought the allegations against Judge Hryciuk were ridiculous. It was quite apparent that Ms. Hunt is very hostile toward Kelly James for some reason.

Santa Marchese is presently a court clerk at the East Mall court facility where she's worked in various capacities for thirteen years. In November, 1992 she had a discussion with Kelly James about ticket sales for the 1992 Christmas party. Ms. James complained to her that she was having difficulty selling tickets because none of the judges wanted to go. Ms. James explained to her that they felt uncomfortable because of Judge Hryciuk. According to Ms. Marchese she, to that point in time, knew absolutely nothing about the complaints that had been made against Judge Hryciuk. Kelly James is reported to have said to her that Judge Hryciuk had ". . . been charged with sexual harassment." Ms. Marchese expressed disbelief and Kelly James went on to explain in the words of Ms. Marchese that he had apparently kissed a Crown congratulating her on her new marriage and she slapped

a sexual harassment suit. Ms. James is then reported to have said: “He’s never done anything like that to me,” and later “Well, I hope nothing happens to him because he’s a really nice guy, and, hate to see something happen.”

It would be an understatement to describe Ms. Marchese as a difficult witness. She came with a mission and was quite determined to say what it was she had to say in spite of the best efforts of counsel. Her suggestion that she knew nothing of the allegations against Judge Hryciuk until her conversation with Kelly James in November, 1992 is simply incapable of belief. According to other witnesses, the complaints against Judge Hryciuk were the main topic of conversation since the spring of 1992. By November of that year the Judicial Council hearing had already taken place and everyone at the East Mall courthouse knew about it. Ms. Marchese described herself as nosey and having observed her in the witness box and listened to her, I simply cannot accept that she would not have been aware of the discussions of the day about Judge Hryciuk. She knew exactly what the situation was. I find, that being so, there would be no need for a conversation in the manner she described having taken place. I do not accept her evidence. As for the evidence of Judge Couto and Ms. Hunt the remarks attributed to Ms. James are capable of an interpretation other than that put on them by Judge Couto and Ms. Hunt.

Pauline Hunt, Santa Marchese, Louise Mitchell, Roman Haruk and Patrick Morris all testified that they knew Kelly James’ reputation for truth and veracity, that it was not good and they would not believe her on oath. They had known her only since she had worked at the East Mall facility and they provided no basis for saying they knew Ms. James’ reputation for veracity. None of them knew of any occasion when she had lied under oath or made a false complaint about sexual misconduct. All of them admitted they were angry with her and did not believe the allegations she had made against Judge Hryciuk.

Ilan Dishy, Laurie Gelfand and Mark Breslin gave evidence on behalf of Ms. James in respect of character to respond to the evidence led in this regard on behalf of Judge Hryciuk. Their evidence was just opposite to that of the court employees mentioned above. In the case of Ms. Gelfand and Mr. Breslin both had known Ms. James in excess of eight years, considerably longer than any of the others. Mr. Breslin, in particular, is a well known and respected businessman in Toronto who recently hired Kelly James to work for him. He explained that he required someone he could absolutely trust and Kelly James was that person.

Judge Hryciuk denies that he grabbed Kelly James’ buttocks in the manner she has suggested or at all on the evening in question. He did not make any comment to her about her not wearing underwear. He absolutely denies that he forced her breasts into his chest and that he rubbed his penis up against her pelvis. He further

denies that he made any comment to her as she has suggested about it not being a roll of quarters or lifesavers that she was feeling.

He has only a vague recollection of Kelly James and Angie Capobianco coming up to him as he stood talking to Fred Fedorsen. He thinks they exchanged greetings but couldn't recall specifically. He recalled going to the washroom after dinner at which time he met Marc Pawlyshyn and had a discussion with him in the corridor leading to the washroom. He has no recollection of having seen Kelly James during his discussion with Pawlyshyn. He danced with Kelly James he thought, three or four times during the course of the evening but nothing out of the ordinary occurred as she has suggested. There was nothing in so far as he was aware in his dealing with Kelly James prior to this evening that would cause her to want to come forward and tell scandalous lies about him.

During cross-examination he admitted that although he has no recollection of kissing and hugging Kelly James that evening he does hug and kiss a lot of people and goes to a lot of parties so those sorts of things would not stick out in his memory.

I am left essentially with having to determine the credibility of Kelly James. There is no evidence before me to suggest that she would have any motive to lie. The allegations she has made are very serious ones and if accepted would in all likelihood result in dire consequences for Judge Hryciuk. The evidence does not demonstrate that she harboured hard feelings for him or any reason why she would want to hurt him. That is obviously not conclusive of the issue but is a factor I must consider. I have considered why she would come forward knowing the publicity her action would receive, knowing the embarrassment there would be for her and for her husband and knowing the hostility she would face from some quarters. Some of the witnesses made it rather clear, that having come forward as she did, Kelly James would no longer be welcomed by most people at the East Mall courthouse. Knowing all these things beforehand, she still came forward with her complaint and testified. She was fairly recently married to a Provincial Division judge and she had just started a new job at the CBC. There was no benefit to her in coming forward as she did and she had very great concern the effect of her coming forward would have on her husband's career. She did not know either Kelly Smith or Susan Lawson. To my mind there was far greater motivation for her to not come forward.

She provided to Commission Counsel full details of her complaint including the names of witnesses she had every reason to believe would not support her version of the events because they were persons close to and supporting Judge Hryciuk. As she explained in evidence, she was asked for the names of persons who may have witnessed certain matters and she responded truthfully in providing those names. I have to ask myself if the allegations she makes are untrue, why in the world would she provide the names of persons she believed would not likely support her,

as witnesses? The only logical answer to that question is that it must have happened as she described it. If the incident was entirely fabricated it would have been a simple matter to say simply that it happened at a time and place where it was not observed by others.

Counsel on behalf of Judge Hryciuk took the position that Ms. James' complaints were of recent fabrication. It was for that reason evidence was led about who she had told about these incidents. Again she provided the names of five persons she had in the past told about these events – her husband, David Fisher, Frank Curley, Arthur Stern and Frank Gabriel. She told counsel at the time that it was unlikely any except her husband and perhaps David Fisher would support her because of their relationship with Judge Hryciuk but she gave their names anyway. Again, I must ask, why provide this information unless it were true? As indicated above, both her husband and Mr. Fisher support Ms. James' evidence in this regard. The others though available were not called but wrote letters supporting Judge Hryciuk which were filed in evidence. Those letters deal with other matters which are not contentious, however and not with this particular issue.

On that same issue of recent fabrication, it should also be noted that if Ms. James had only very recently fabricated the entire story the obvious implication of that is that Judge Bovard must have conspired with her and agreed to give false evidence to the effect that he'd been told about these events much earlier. There is just simply no evidence to support such a proposition. The very suggestion is most improbable, and I reject it.

Kelly James told the Commission why she determined to come forward when she did and I found her reasoning compelling. She said she'd seen the television coverage of Kelly Smith and Susan Lawson and was so troubled by it and an article in the Toronto Sun newspaper castigating those two complainants that she felt an obligation to come forward. Her decision was confirmed when she read another article in the Toronto Star newspaper the following Monday which took an opposite view to the Sun article.

I discussed the character or reputation evidence in some detail above and explained why I preferred that offered on behalf of Ms. James to that against her. That too is a factor which I have considered in assessing Ms. James' credibility.

Ms. James gave her evidence in what I thought was a careful and thoughtful manner. She was not shaken at all by a very vigorous cross-examination.

Lastly, I look to the expert medical evidence called. I preferred the evidence of Dr. Steinberg over that of Professor Duckworth. I am satisfied that the incident in the washroom hallway could well have occurred as Kelly James described.

In all of the circumstances, I am plainly and well satisfied that the incidents described by Ms. James happened in the manner as she described them.

I do not think it possible to ever reconcile entirely and make perfect order of all the evidence I have heard about that particular party. The witnesses, by and large I think tried to recall the events of that evening as best they were able. Some had reason for recalling certain matters such as Mr. Fedorsen who recalled going to that particular party with a friend who was terminally ill at the time. Others had no special reason to recall those events. To them it was until very recently, just another Christmas party and then suddenly there was reason to make specific recollection of matters that, at the time, were quite insignificant.

On the facts as I have found them were a trier of fact satisfied beyond a reasonable doubt, Judge Hryciuk would be guilty of sexual assault.

Kelly Smith

Ms. Smith was called to the bar of Ontario in 1989. From the spring of 1989 to December, 1989 she worked as a duty counsel for the Ontario Legal Aid Plan. From December, 1989 to March, 1990 she was employed by the Ministry of the Attorney General as an Assistant Crown Attorney on contract and thereafter on a full-time basis.

During her first three months as duty counsel she would have appeared in Judge Hryciuk's court for a total time of about three weeks. She only ever saw him in court with one exception, and their relationship was strictly professional. The only time she spoke to Judge Hryciuk out of court prior to January 18, 1992 was on one occasion when she spoke to him in the hallway and he asked her to write a letter to complain about prisoners not being brought to court on time. She never discussed personal matters with him in 1989 and did not recall ever discussing career matters with him.

She found Judge Hryciuk to be a very, very nice man who treated her respectfully. She said he seemed to go out of his way to protect her in court whenever she was there.

Following her initial three months as duty counsel at Old City Hall she did not see Judge Hryciuk again until January 18, 1992. That was a Saturday and Ms. Smith was doing a Saturday morning bail court at Old City Hall as part of her regular duties as a Crown Attorney. She arrived before 9 a.m. to insure she got the court she wanted and subsequently when she learned that Judge Hryciuk was to be the judge, she was pleased to death.

Shortly before 10 a.m. she went to the courtroom. She and Judge Hryciuk greeted one another with a smile and engaged in informal banter before the day's

list began. He asked her how she was, she told him she had married since she'd last seen him, and had a new name and introduced herself by her married name. She showed him her ring and he congratulated her. They passed a pleasant morning in court with nothing unusual happening and court ending around 11 or 11:30 a.m. Judge Hryciuk stepped down into the courtroom and he and Ms. Smith continued their discussion as they left the courtroom. He was smiling and happy to see her and she to see him. He told her she looked great and that marriage must agree with her and expressed some surprise that she was a Crown. They left the courtroom together and walked to the main staircase located in front of the main front doors leading into Old City Hall from Queen Street West. They discussed her enjoyment being a Crown Attorney and his Delay Reduction Project for the courts. He remarked that she must have more important things to do on a Saturday morning than stand around talking to him. She replied that she did not but took it as her cue to leave. She had moved up one stair and while shaking his hand goodbye Judge Hryciuk pulled her close, gave her a hug and kissed her on the cheek. He said it was great to see her again and called her "Smitty" as she went up the stairs. She found the incident patronizing as well as innocent; she took no offence and found it quite innocuous.

She proceeded up to the office to retrieve her coat and purse, came back down the same main stairway and asked a passing court service officer if the front doors were open. As she asked the question, Judge Hryciuk called to her from the far end of the hallway to the west as he came toward her, "Smitty, wait up." She waited for him and noticed that he had his coat on. He repeated essentially the conversation they had earlier at the foot of the stairs and as he'd done on that earlier occasion stood very close to her. She could smell the mint gum he was chewing. There was no one else around, the court service officer had disappeared. Before she knew it, Judge Hryciuk had his hands on either side of her face, on her cheeks, and he then kissed her hard on the mouth and stuck his tongue in her mouth. She said she jerked her head back hard, she was so shocked that his tongue had been in her mouth, she just could not believe it. His hands were still on her face and she could see her red lipstick on his face. He then said: "Give me another kiss" and again kissed her on the mouth but did not stick his tongue into her mouth on that occasion. She told him he had lipstick on his mouth as he began to walk away from her backwards in the direction from which he'd come. As he did so he was grinning at her, wiping the lipstick from his mouth with the back of his hand repeating ". . . so good to see you again, Smitty." She said she was mortified and humiliated but said nothing. She headed for the front door. She thought she should call Mary Hall, her supervisor, to report the incident and thought about using a pay phone in Old City Hall for that purpose but decided against it because she did not want to confront Judge Hryciuk again. She left the building, got her car and drove home.

When she arrived home, her husband was just returning from a morning of skiing and he asked her how her day had been. As she proceeded to tell him what had happened to her, they entered the house and she burst into tears. She telephoned Mary Hall, but found she was away for the weekend and then contacted John McMahon, who at the time was also an Assistant Crown Attorney in the Scarborough office and who looked after matters there in Mary Hall's absence. She repeated to John McMahon what had happened to her at the Old City Hall that morning with Judge Hryciuk. Mr. McMahon suggested that she make notes of what had occurred and that her husband should do the same and that they should do so independently of one another. He told her that he would make notes of their conversation as well and would report the incident to Mary Hall. He met with Ms. Smith and with Mary Hall at the courthouse at 361 University Avenue, Toronto on the following Monday. Subsequently there was a meeting with Jerome Wiley, Q. C., the Regional Director of Crown Attorneys for the Toronto Region, following which Ms. Smith determined that she wished to proceed with a complaint against Judge Hryciuk to the Judicial Council.

The evidence of both Mary Hall and John McMahon confirms that of Ms. Smith as to her conversations with them. Mr. McMahon noted the time of the telephone call to him at 1:10 p.m. on Saturday, January 18, 1992.

Ms. Smith stated in her evidence that she has enormous respect for the position of the bench. From her perspective as a young lawyer practising in the provincial criminal courts the judge is all powerful both inside and outside the courtroom. As she put it: "He's the judge and there's nothing more that needs to be said than that fact."

She has already begun to feel the effects of having made her complaint. She has been subjected to rude and inappropriate comments from other counsel. She is greatly worried about the impact that the making of this complaint will have on her career, that she a young Crown Attorney would dare to take on a very senior judge.

Judge Hryciuk's version of the events which transpired that morning differs in some respects from that of Ms. Smith. Up to the time of their second encounter at the bottom of the main stairs, the only real difference in their evidence is that Ms. Smith says the hug and kiss was at the end of the conversation and Judge Hryciuk says it was at the beginning of it. In any event, I do not think anything turns on whether it was at the beginning or at the end of the conversation. It was innocuous to use Ms. Smith's description of it, and she took no offence from it.

His evidence relating to the second meeting, however is significantly different as is his evidence about the nature of the relationship he had with

Ms. Smith. Judge Hryciuk says the first day Kelly Halajian (Ms. Smith's maiden name), was in his courtroom as duty counsel she ran up to him after court to ask how she was doing. He remembered the incident because it was not common for young counsel to do that. He said that she would often approach him and exchange pleasantries. The last conversation he had with her before January 18, 1992 she told him she was thinking of going into private practice. They discussed the fact that she spoke Spanish and he told her the Attorney General was hiring women and it would be good experience for her. In fact, he said he discussed the conversation he'd had with Kelly Halajian with Faye McWatt who at the time was leaving the Crown's office for private practice. He suggested Ms. McWatt should give Kelly Halajian a call.

When he met Ms. Smith at the bottom of the stairs on the second occasion after he had his coat on and Ms. Smith had retrieved her coat and purse from the upstairs office, he said he told her the front doors were probably locked. He again told her it had been a pleasure working with her, that it was nice seeing her again after not seeing her for a couple of years. He said that he then said to her "Let me kiss you goodbye" at which point he took her face in his two hands and with his mouth closed kissed her on the lips. He then patted her on the back and wished her well. They both stepped back and she said to him that he had lipstick on his lips. He continued on his way and she went out the front doors. He said he kissed her on the lips because to him it was a natural reaction to one he considered a good friend, someone he'd given advice to and to someone who had always approached him in a friendly outgoing manner. He kissed her only once on that second occasion as he would kiss his son or his daughter and he did not put his tongue into her mouth.

Judge Hryciuk is a physically demonstrative person. He typically greets friends and acquaintances, both male and female, with a double handshake, a hug and/or a kiss. A number of witnesses who know Judge Hryciuk testified to these characteristics. He himself explained that if he likes or respects a person he will kiss that person and does so to express his affection; he intends nothing sexual by such conduct.

He was devastated when he learned of her complaint to Judicial Council.

Faye McWatt testified that she had a conversation with Judge Hryciuk about Kelly Smith at the time she (McWatt) was leaving the Etobicoke Crown's office in September, 1989. He told her Kelly Smith could speak Spanish and she understood that he was recommending to Ms. Smith that she should go to the defence bar although Ms. Smith had applied to the Crown's office. She says she knew they had a conversation because Ms. Smith was leaving her position as duty counsel at that time.

Ms. McWatt said when she first heard the allegations about Judge Hryciuk and Kelly Smith she remembered having this conversation with Judge Hryciuk in 1989 at the time she was leaving the Crown's office and Judge Hryciuk mentioned Kelly Smith's name and asked her if she knew Kelly Smith.

The difficulties I have with Ms. McWatt's evidence are firstly, that by September, 1989 Kelly Halajian (as she was then) was long gone from Old City Hall on her rotation as duty counsel so any conversation she may have had with Judge Hryciuk would have to have been sometime before his conversation with Ms. McWatt. The "parallel" conversations she suggests were taking place would not be possible in that time frame. Secondly, Judge Hryciuk has stated that it was his recommendation to Ms. Smith that she not go into defence work but that she look into a Crown position. Thirdly, the name "Smith" could not have rung bells for Ms. McWatt when she heard it in relation to the complaints against Judge Hryciuk because of this conversation that took place in September, 1989. At that time, Ms. Smith was still Kelly Halajian and if she'd even met Andrew Smith at that point in time, she had only just.

The only relationship Judge Hryciuk had with Kelly Smith was a professional one. On January 18, 1992 he had not seen Ms. Smith for two and one-half years since she had last appeared in his court as duty counsel.

On the evidence of both Ms. Smith and Judge Hryciuk all was well until they met for the second time that day at the base of the main stairs.

When Kelly Smith arrived home that day she was very upset. As she tried to explain what had occurred to her husband she was sobbing. Andrew Smith, her husband, described the crying as quite violent and said it was hard for his wife to catch her breath. He found it difficult to understand her until she got a little more under control. She explained to him what had happened and ran upstairs to brush her teeth.

After she came back downstairs, she made the telephone call to John McMahon. Mr. McMahon was at the Scarborough Crown Attorney's office on that Saturday when he received Kelly Smith's call. When he initially answered the call, there were uncontrollable sobs and when she got out who it was he immediately recognized her voice. He said Kelly was very, very upset; she was sobbing uncontrollably to the point where she was having difficulty breathing. She was finally able to explain to Mr. McMahon, as she had to her husband, what had occurred between her and Judge Hryciuk.

If the second kiss had been merely as Judge Hryciuk describes it, there would be no explanation for Ms. Smith's very strong emotional reaction. She had been kissed during the first conversation and took absolutely no offence, describing

that incident as “innocent” and “innocuous.” Yet as the result of the kiss received on the second occasion, she had the very strong emotional reaction described by her husband and John McMahon. There is no evidence to suggest that Ms. Smith is subject to sudden strong emotional outbursts for no reason.

It has been suggested that Ms. Smith was mistaken about the event. Judge Hryciuk has been described by Barbara Bennett as a sloppy kisser. It was argued that Ms. Smith perhaps only thought Judge Hryciuk had stuck his tongue into her mouth and what she in fact had felt was his lip. Ms. Smith denied the suggestion when it was put to her during cross-examination; she knew it was his tongue he had put into her mouth, it was not his lip and she was not mistaken. Two other women who testified said they did not think they would mistake someone’s lip for a tongue being inserted into their mouths.

There was absolutely no evidence to suggest any reason why Kelly Smith would want to make the incident up and thereby cause trouble for Judge Hryciuk. Up to that point in time on the Saturday morning she thought very highly of him.

Judge Hryciuk admits to kissing Kelly Smith on the lips on that second meeting. The earlier kiss had been to her cheek. He also admits that Ms. Smith told him he had lipstick on his lips following the second kiss, perhaps suggesting more than a mere brush of the lips.

Judge Hryciuk’s explanation of the conversation he’d had with Ms. Smith leading up to the second kiss is essentially a repeat of the things he’d already said to her — it was good to see her again, that he was pleased she was married, that he was happy things were going well for her and so on. He had already kissed her once to congratulate her and had shaken her hand goodbye. She absolutely denies that he said to her before the second kiss “Let me kiss you goodbye.”

He says he called to her when it appeared to him she was heading for the front doors which he thought were closed and he told her he thought those doors were closed. Yet when the conversation ended Kelly Smith headed straight for those doors without a further word from Judge Hryciuk. As it turned out the doors were open but Judge Hryciuk did not know it at the time. I find it strange that, assuming nothing untoward had occurred during their conversation, he would not have directed her to a door he knew to be open or walked with her to one. It suggests to me that for some reason she left the conversation somewhat abruptly which is consistent with her evidence.

Kelly Smith gave her evidence in a clear and forthright manner and was not shaken in any respect whatsoever during a most vigorous cross-examination. Her anger toward Judge Hryciuk for what he’d done to her was still apparent. She had no difficulty looking him straight in the eye as she gave her evidence.

On the whole of the evidence I have no hesitation accepting Ms. Smith's evidence over Judge Hryciuk's. I find that the incident which occurred the second time they met on January 18, 1992 occurred in the manner described by Ms. Smith. As in the case of Ms. James' complaint, on these facts as I have found them, were a trier of fact satisfied beyond a reasonable doubt, Judge Hryciuk would be guilty of sexual assault.

As was the case with Ms. Lawson's evidence, the argument has been made on behalf of Judge Hryciuk that Ms. Smith's demeanour was such while she gave her evidence that I should conclude that she is not a reliable witness. It was suggested that her entire reaction to the incident was one of over-reaction being both hysterical and irrational. Reference was made to Ms. Smith's description of Judge Hryciuk, when he asked for a second kiss immediately after he'd stuck his tongue in her mouth, as being like an old man begging for a kiss and being pitiful. It is suggested that description is "irrational" as was her reference to him being "a dirty old man." From her perspective, however, that is precisely what he was. He had just kissed her on the lips hard and inserted his tongue into her mouth, an act to which he had absolutely no reason to believe Ms. Smith would be receptive. Her reaction in the circumstances is understandable and is, in my view consistent with the events as she has described them. She was angry and had every right to be.

Mr. McLean scoffed at Ms. Smith's expressed fear at the time that she may have caught a disease from him, and says such reaction is totally irrational. I disagree. We are constantly bombarded these days with messages about safe sex. Advertisements appear in the various media, there are signs in the subway, on buses, on street corners and just about everywhere where people congregate. Some are more explicit than others. It is no secret in this day and age, that one of the ways certain diseases are thought to be transmitted is by bodily fluids including saliva. In the circumstances, I find nothing at all irrational about Ms. Smith's reaction.

Other Defences Raised

Judge Hryciuk has admitted that he was reckless with his sexual humour. He has further admitted that it was not unusual for him to make comments to women that had sexual overtones or were, as he saw them, of a humorous sexually suggestive nature. In his defence, however, he says he did not realize these types of comments were inappropriate until he took a gender sensitivity course in November, 1992 at which time he became aware that this type of conduct was simply not on.

Judge Hryciuk forgot when he gave his evidence initially, that he had attended a week long educational program for provincial judges at the University of Western Ontario in May, 1990. Part of that program was devoted to Gender Equity

issues and the materials handed out at that time have been filed as Exhibit 17 to these proceedings. It should of course also be borne in mind that the Judicial Council hearing in relation to certain of the complaints took place in October, 1992.

Lesley Baldwin is an Assistant Crown Attorney in Brampton, Ontario. She was called to the bar of Ontario in 1981 and has been with the Ministry of the Attorney General since then. She has been an Assistant Crown Attorney for almost five years.

On November 23, 1991 she attended the Brampton court staff annual Christmas party referred to earlier. On that occasion she was approached by about six women who spoke to her about Judge Hryciuk's conduct on that evening. She could only recall the names of three of those women, Suzanne McTavish (who is also known as Suzanne McKenzie), Dale Lumb and Janet Beneteau.

As a result of those discussions she spoke to Judge Hryciuk. She was standing by herself and he approached her and put his arm around her shoulder. She said she elbowed him back to make a point, although she really didn't object to his arm on her shoulder. She told him she'd been approached by a number of women who were concerned about his behaviour at the Christmas party. She told him she understood he had been behaving like a sexist pig, that he had been touching them inappropriately and that he had to stop. She told him this was the 1990's and people were not going to tolerate this anymore. She told him this kind of behaviour was going to get him into trouble.

She said Judge Hryciuk reacted to her comments by jumping back and saying: "What moi?" or "Who moi?" or something to that effect. He denied what she was saying and dismissed her and her comments. Lesley Baldwin denies that she also called Judge Walter Gonet a sexist pig on that evening.

Lori Montague was called to the bar of Ontario in 1987 and has been an Assistant Crown Attorney in Brampton since December of that year. She was in my view a most impressive witness. She attended the Brampton Christmas party in 1991 with Lesley Baldwin and Ms. Baldwin's husband. She was in the washroom with Lesley Baldwin when she was approached by several women. Ms. Montague only overheard a small part of the conversation. She knew the topic was Judge Hryciuk's conduct that evening and she heard Suzanne McKenzie say "This is ridiculous" and rolling her eyes. During the course of the evening Judge Hryciuk joined Ms. Montague and the others at her table; he sat next to Ms. Montague and had his arm around her during their discussion. She took no offence but during the conversation Ms. Baldwin reached around Ms. Montague and lifted Judge Hryciuk's arm from her shoulder and let it drop behind the chair.

Ms. Baldwin said that she was going to confront Judge Hryciuk about his conduct that evening. Both Ms. Montague and Ms. Baldwin's husband asked her if she was sure she wanted to do that and she said she did. Ms. Montague and Ms. Baldwin then both got up from the table; Ms. Montague went over to the bar area where she had a discussion with Judge Gonet. During her conversation with Judge Gonet she observed Ms. Baldwin and Judge Hryciuk standing in the very northwest corner of the restaurant by themselves. She obviously could not hear what they were saying but their heads were close together and Ms. Baldwin was raising her hands up and down during the conversation with the palms open. Later just before they were leaving she noticed Ms. Baldwin speaking with Judge Gonet but did not hear what was said. On the way home in the car Ms. Baldwin told her husband and Ms. Montague that she had told Judge Hryciuk that he was behaving like a sexist pig.

Judge Hryciuk says Lesley Baldwin did not call him a sexist pig as she claims. He said he was standing three to four feet from Judge Gonet at the bar and heard Ms. Baldwin say to Judge Gonet: "You're nothing but a sexist pig." He did not hear her say: "This is the 90's" or that he could lose his job over it.

Judge Walter Gonet was appointed a Provincial Court Judge in November, 1983. He graduated from law school in 1959. He worked in the legal department of Canadian Pacific Railway for ten years before going into private practice.

He has known Judge Hryciuk for over twenty years. He and Judge Hryciuk are well known in the provincial criminal courts for their very successful Delay Reduction Project. They became known as "The Two Wallys." They know one another socially and share similar ethnic backgrounds.

Judge Gonet testified that he attended the Brampton Christmas party in 1991. While he was at the bar getting drinks for others at his table, Ms. Baldwin, who he did not know well at the time, approached him and said: "You'll never try a sexual assault case of mine" to which he responded: "What? Why would you say a thing like that?" to which Ms. Baldwin replied: "You're nothing but a sexist pig."

There is no evidence before me to suggest that Lesley Baldwin was impaired that evening. Judge Hryciuk and Judge Gonet look nothing alike and she knew both of them and was not confused. On the evidence of Lori Montague, which I accept, there certainly was the opportunity for Ms. Baldwin to have the discussion with Judge Hryciuk she says she did. Her conduct before that discussion expressing her intention to have such a discussion as well as her conduct afterward in describing that conversation to her husband and Ms. Montague is consistent with such a discussion having taken place. She has absolutely no motivation to lie; there is no evidence to suggest she harbours hard feelings for Judge Hryciuk. I accept Ms. Baldwin's evidence and find that she had the conversation she described

with Judge Hryciuk on the evening of November 21, 1991. It is not necessary for present purposes for me to deal with the conflicting evidence of Judge Gonet and Ms. Baldwin.

I have difficulty accepting Judge Hryciuk's assertion that he was not aware that his conduct was inappropriate prior to November 1992. On the facts as I have found them, he had attended a gender sensitivity course in May 1990 and had been specifically spoken to about his conduct by Ms. Baldwin in 1991. The only matter of complaint which took place before May of 1990 was Susan Lawson's. And in respect of her complaint I can only say that if, in 1988, he did not know that he should not say to a much younger woman, whom he barely knew and at that only in a professional sense, a comment by which he intended to convey that she could flick his penis anytime she wished – he should have.

Lastly in his defence it is argued that Judge Hryciuk used his humour to relieve the high stress which the nature of the work creates for those persons involved in the criminal justice system. Much evidence was led from judges who preside over criminal courts and lawyers who practice in the criminal courts. They said they find a release in humour and that the humour traditionally enjoyed in that area of practice is bawdy and sexual humour. There was no evidence called from persons engaged in other areas of practice from which any sort of comparison of relative stress levels could be made. Barbara Bennett made it clear when she was cross-examined by Mr. Hunt that she would not want it taken from her evidence that the criminal bar must resort to inappropriate sexual humour to relieve stress. Jokes are one thing, specific sexual conduct and/or remarks directed at a specific individual are quite another.

Position of Judges

It is important before moving to consideration of the specific argument advanced and what the appropriate standards of judicial conduct may be, to consider the position of the judge and how he or she is perceived by others involved in the administration of justice. Considerable evidence on this point was developed throughout the hearing.

Mary Hall is an experienced Crown Attorney called to the bar of British Columbia in 1977 and to the bar of Ontario in 1979. From 1979 to 1988 she served as an Assistant Crown Attorney at Old City Hall and the College Park Courts in the City of Toronto. In the summer of 1988 she was the supervising Crown Attorney and acting Bureau Chief at Old City Hall. In 1988 she was appointed Crown Attorney for Metro East in Scarborough. She has a very great deal of experience in the criminal courts.

She was asked the following question and made this reply:

Q: Now, can you tell me what is the nature of the dynamics of the relationship at the Provincial Court between young lawyers and the judges?

A: That's a hard question. I guess when you're first called to the bar, and I speak not only from personal experience but now as a supervisor of twenty-five Assistant Crown Attorneys, you think that a judge is right up there next to God.

He or she is the person that ultimately decides the guilt or innocence of someone that perhaps decides the cases in relation to a victim or a witness that you've prepared for court and is the arbitrator of your success as a trial lawyer.

We, as Assistant Crowns, appear regularly in front of a small group of judges and they very much determine our success in criminal law in the Crown system.

Marilyn Bartlett chose to ignore the remarks that were made to her and which made her feel uncomfortable. She said she was one of the Crowns assigned to the special project with which Judge Hryciuk was involved and it was not going to work if she could not get along with the judge. She determined therefore to ignore the remarks and simply to do her job. She did not contemplate a formal complaint.

Malka Goldenberg was asked why when she felt uncomfortable did she not say anything to Judge Hryciuk. She said she had no idea how to respond. Had she had the experience then that she has today she would have said something, then she was intimidated. When asked why she was intimidated, she responded as follows:

A: I felt that His Honour, my feelings about any judge, are that they have a certain amount of power over me, authority over me. I just didn't think it was my place to say anything.

Ms. Goldenberg determined after that incident to never again go into chambers with Judge Hryciuk.

Susan Lawson was asked why she did not say anything to Judge Hryciuk after his comments to her and she said:

A: He was a judge. I don't know what I could have said to him. I didn't make any response to it.

Q: Can you just expand upon that, if you can, and if you can't don't. He was the judge, what do you mean by that?

A: Well, he was a person who had some power and authority over me, and I knew I had to go back in and finish prosecuting a list in front of him, and I didn't want to have any kind of altercation.

So I just thought it was best to carry on, and then get out of there as far as I could.

And later when asked to explain what her experience had been in so far as the relationship of a young Crown Attorney with the judges, responded:

A: A young Crown Attorney's career and reputation, to a large extent, depends on how that person gets along with the judge and with the judges.

It can really make or break your early career, to a large extent. I was really worried about jeopardizing that, because I knew that if I made a lot of the issue that it could really make my life miserable at Old City Hall.

Kelly Smith was asked to describe the nature of the relationship that exists between young lawyers practising on a day to day basis in the provincial courts and the judges who sit on that bench and she said:

A: I don't know if I can speak for any of the lawyers but myself, as far as I'm concerned, there is an enormous respect for the position of the bench. There is an enormous awe that a judge is cloaked with, in the eyes of certainly myself, as a young counsel.

The fact that a judge would take an interest in you in court and go out of his way to look after your interests in an attempt to protect you in court was certainly something that made you feel very special and very significant, because it was an all-powerful person that was taking this interest in you. For me it was simply tremendous respect.

Dennis Mills, the court document clerk at Old City Hall said of judges: . . . "When I'm in their courts, they're my bosses."

Barbara Bennett when Mr. O'Connor suggested to her that judges have a special position and are at the top of the ladder in the court system responded very simply: "They're the judge."

Kelly James was asked why when she was dancing with Judge Hryciuk, she didn't ask him to stop what he was doing to her and she answered:

A: Because he's a judge.

Q: What do you mean by that?

A: I just didn't want to upset him I guess.

Q: Can you expand on that, why you wouldn't want to upset him?

A: Well, I was a freelance court reporter. I wasn't a civil servant. I did not have any job security nor did I have benefits, nor did I even have a contract to work at the East Mall.

If I had caused any waves, when I called in for hours the next week, I was afraid that I would just be told my services were no longer needed.

It is important in considering conduct of this nature to bear in mind the significant power imbalance between the judge and the other persons involved.

A judge is an independent. He/she is, in the case of provincial judges, appointed by the Lieutenant Governor in Council, on the recommendation of the Attorney General and can only be removed from office after a complaint is made to the Judicial Council and a recommendation to that effect is made by a Commission such as this one. There is not at present any process available for any lesser disciplinary measures to be taken against judges. While the judges are answerable to their Chief Judge in terms of scheduling and matters of that nature, under present legislation the Chief Judge has no disciplinary authority over the judges and has not the power to terminate them. There are reasons why it is so but they are not relevant to the terms of this inquiry. It can be seen however, in this respect alone, judicial office is quite different from any comparable position in the private sector. One can understand why someone such as a very new Crown Attorney, a court reporter or even a new judge might be reluctant to make a complaint against a judge in these circumstances and particularly directly to the judge himself. Failure to complain to a judge does not reduce the inappropriateness of the conduct.

While a judge has no official authority over other persons working in the court system, in terms of playing any role in the hiring, firing or otherwise disciplining of those persons, it is apparent that by his very office, he plays a significant and unique role in their working lives. Judges must take particular care never to misuse or to abuse that power. Appointment to judicial office is a very high honour, but with that honour, comes enormous responsibility.

Standards of Judicial Conduct

To this point in time there have been but six public inquiries into the conduct of provincial judges in Ontario since the introduction of the public inquiry procedure in 1968. While none of those inquiries dealt specifically with the type of conduct

here in issue, they nevertheless set out the standards for judicial conduct which apply to provincial judges.

This inquiry as stated earlier, is not concerned with Judge Hryciuk's ability or performance as a judge in the courtroom. The evidence is unchallenged, that over his career he has been not just a good judge but an excellent judge in that respect. What is in question is Judge Hryciuk's conduct in relation to women when he is not engaged in his specific judicial function.

Three prior inquiries have considered the extra-judicial conduct of provincial judges, the Henriksen, Williams and Bannon Inquiries where the Commissioners were respectively, The Honourable Mr. Justice Houlden, The Honourable Mr. Justice Robins and The Honourable Mr. Justice Grant.

Mr. Justice Houlden summarized the principles governing judicial conduct as follows:

1. A judge's conduct in the performance of his judicial duties and in his behaviour in his personal life must be free from impropriety and the appearance of impropriety.
2. The confidence of the public in the administration of justice is of paramount importance and that confidence depends on public confidence in our judges. Hence a judge must conduct himself at all times in such a way as to maintain public confidence in him.
3. The standards of conduct imposed on judges are more exacting than those imposed on ordinary citizens. However, in applying those standards human frailties and fallibilities must not be forgotten.
4. A judge owes an obligation of candour in all matters which affect the public exercise of his duties and in all personal matters which affect the public.

and he continued:

To warrant removal from office, there must be more than indiscretion or error in judgment.

Mr. Justice Robins served as Commissioner in the 1978 Commission of Inquiry Re: Provincial Judge Harry L. Williams. Under the heading "The Position of a Judge" he stated:

Fundamental to the ideal of justice, and no less so because it is so often repeated, is the principle that justice should not only be done but manifestly be seen to be done. And, because a judge's role is so intimate a part of the process of justice that his misbehaviour must inevitably reflect upon it, it is equally fundamental that a judge's conduct should

be free from impropriety and the appearance of impropriety. The general principle is basic to all aspects of judicial behaviour — not only to a judge's behaviour in the performance of the duties of his office but also to his behaviour in his personal life.

A judge's responsibility as a judge does not begin or end at the courtroom door. His behaviour off the bench is not wholly outside his position as a judge and may fall within the realm of legitimate public concern. If he engages in irresponsible or improper conduct — conduct which causes others fairly to question his character, his honour, his integrity, his morals, his sense of decency — he loses respect, not only for himself as a person, but for the court over which he presides and the judicial process. Such conduct, even though in private life, may be at variance with his obligations as a judge and may affect his ability to discharge fully and completely his duties on the bench. Public knowledge of improper conduct by a judge can only erode public confidence in him as a judge and in the administration of justice.

The confidence of the public in the administration of justice is of paramount importance. That confidence is vital to our democratic system of government. And public confidence in the judiciary — in its integrity, its impartiality, its independence, its moral authority — is indispensable to the administration of justice. In the ultimate analysis the authority of our courts rests on public acceptance of judicial decisions — and that acceptance in turn depends on public confidence in our judges.

Every judge in his judicial and non-judicial activity has a responsibility to preserve and enhance public confidence in the administration of justice. He serves as an exemplar of justice, to much of the public its personification, and confidence in our system of justice in large measure depends on him. When he engages in misconduct, the magnitude of the misconduct may be measured by the extent to which he has impaired the confidence of the public in himself as a judge and in the administration of justice.

In discussing the issue whether specific conduct constitutes misbehaviour requiring removal from office he said:

There must be allowance for forgivable error; human frailties and fallibilities must not be forgotten; none of us can attain the ideal. To warrant removal misbehaviour should be more than indiscretion or error in judgment . . . There are no tests of misbehaviour capable

of exact definition. Nor are there standards of judicial conduct which admit of quantitative measurement. Each case must ultimately depend on the nature of the conduct, all the facts surrounding it, its effect on the judge's ability to perform his official duties, and the extent to which it has impaired public confidence in the judge and in the administration of justice.

In the Williams Inquiry Mr. Justice Robins found that Judge Williams had consorted with prostitutes, dealt with procurers, condoned criminal activities and displayed a lack of regard for the dignity and honour of his judicial position. He found that the behaviour was relevant and pertinent to Judge Williams' ability to discharge his official duties, must seriously diminish public respect and confidence, and would impair his ability to function as a judge of a criminal court. The Commissioner found that there must be a public perception that the judge is impartial and objective, and Judge Williams would be viewed by many as a judge who by his own conduct, had disqualified himself from judging the conduct of others in criminal courts.

In my view the standards set out by Mr. Justice Robins and Mr. Justice Houlden respectively in the Williams and Henriksen Inquiries are the appropriate standards to be applied here. Counsel for Judge Hryciuk do not disagree and for that reason I do not consider it necessary to deal with the tests and standards that have been applied in other cases at other times in other jurisdictions except very briefly.

The test adopted by the Canadian Judicial Council in the Nova Scotia Reference Case was developed in the context of a complaint about certain remarks made and contained in certain reasons for decision issued in the course of adjudicative duties. The Council was not in that case concerned with the personal conduct of judges in and out of the courtroom.

The recent case before the Manitoba Judicial Council concerning the comments of Provincial Judge Frank Allen was also concerned with comments made from the bench in the course of Judge Allen's adjudicative functions. In that case the Judicial Council adopted the test set out in the Nova Scotia Reference Case. Again the concern was not the personal conduct of Judge Allen in and out of the courtroom. The conduct considered by the Council in that case was a series of remarks about women that may have suggested a bias against women.

There is no written code of judicial conduct for judges in this province as there are in other jurisdictions. The British Columbia Provincial Court, for example, is the only Canadian Court with a written code. Their Code of Judicial Ethics was promulgated in 1976 and most recently revised in June, 1993. Rule 4.00 of that Code provides:

Everywhere and at all times, judges should behave irreproachably.

- 4.01 Judges should always conduct themselves properly.
- 4.02 Judges should expect to be constantly scrutinized by the public. Consequently they should also voluntarily impose upon themselves certain restrictions on their behaviour, their associations and their public appearances.
- 4.03 Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Rule 14.00 of that same Code provides:

Judges should treat all those appearing before them with deference and respect.

I do not think any would disagree with these statements of general principles.

The American Bar Association also has a written Code of Judicial Conduct which was most recently amended in 1990. It is the only Code to specifically address the issue of sexual harassment by a judge. Canon 3 provides:

A judge shall perform the duties of judicial office impartially and diligently.

Canon 3, B(5) provides:

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

The commentary following Canon 3, B(5) provides:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial

expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behaviour that may be perceived as prejudicial.

Canon 4 of the American Bar Association Code provides:

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Section A provides:

Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (i) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (ii) demean the judicial office; or
- (iii) interfere with the proper performance of judicial duties.

The commentary under this Canon provides:

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status.

The American Code is interesting and provides an example of a laid-down code of conduct. In my view it does not add, in substance, to what had already been said so eloquently in this country by Mr. Justice Robins in 1978 at pages 17 and 18 of his report following the Inquiry re: Provincial Judge Harry L. Williams which is set out above.

A judge has at all times an obligation to remain impartial and to maintain the appearance of impartiality. He is required by the nature of his office to perform his judicial duties without bias or prejudice and to perform them fairly. If by his conduct he demonstrates or manifests any bias he impairs the fairness of the proceedings and brings the judiciary and indeed the administration of justice into disrepute. Such expressions of bias may cause others to doubt his capacity to act impartially. Making sexist and demeaning comments to women and touching them in ways which are both sexual and inappropriate are examples of such biased conduct. If there is any place where women are entitled to be treated equally it is in the courts of this land.

There is no excuse for judges to engage in sexist behaviour. They are obliged by the office they hold to insure that at all times they maintain in their courtrooms and elsewhere where they have the control an atmosphere of gender neutral professionalism. Nothing less is acceptable.

Certain of the complaints brought against Judge Hryciuk, if viewed alone, would not of themselves in my view warrant removal from office. For example the comment he made to Marilyn Bartlett and the comments he made to others in her presence would not in themselves warrant removal from office even though they are inappropriate and unprofessional. However, when such comments are viewed with the rest of his conduct of which complaint is here made we have a judge who has consistently made sexist and demeaning comments to women. He has continued to make such comments after taking a judicial education course on gender issues, he continued the conduct after a woman Crown Attorney spoke to him about his conduct, and even after the Judicial Council hearing had taken place and he was aware of the Smith and Lawson complaints he says he did not realize there was anything wrong with his conduct until he took a further course in November, 1992 — after the Judicial Council hearing. Far more serious of course is his conduct in relation to Ms. Smith and Ms. James which is tantamount to sexual assault.

He has displayed a lack of regard for the dignity and honour of his judicial position. His conduct must seriously diminish public respect and confidence in him and thereby severely impair his ability to function as a judge of a criminal court.

In all of the circumstances it must be concluded that his misconduct is such that it does not serve the best interests of the administration of justice in this province that he continue as a Provincial Division Judge. It is particularly regrettable in view of his past service on the bench, but nevertheless inescapable that his continued position as a judge is untenable.

Conclusion

For these reasons I report that His Honour Judge Walter P. Hryciuk, a Judge of the Ontario Court (Provincial Division) has become incapacitated or disabled from the due execution of his office by reason of conduct that is incompatible with the execution of his office and I recommend that he be removed from that office.

As to costs, I see no reason why Judge Hryciuk should be compensated for all or part of his costs and accordingly make no recommendation in that regard.

COMMISSIONER

Appendix A

LIST OF EXHIBITS

1. Order in Council (369/93).
2. Two Notices of Public Hearing published on June 23, 1993 (in the Globe & Mail and the Toronto Star).
3. Notice of Public Hearing.
4. Commission Counsel Submission on Procedure.
5. Two Notices of Public Hearing; one published in the Globe and Mail on August 3, 1993, and one published in the Toronto Star on August 5, 1993.
6. Commission Counsel Submission on the Media.
7. Letters from members of the public filed by Commission Counsel (from Gilbert Taylor; July 13th from John Stroz; July 15th from William Trudell; August 16th from Arlene and Robert Munnings; August 23rd from Maynard Capes; August 25th from Elizabeth Frazer; July 23rd from Peter Rickaby; September from James McIntosh).
8. Certified copy of collection of judge's dockets dated September 10, 1993.
9. Certified copy of information sworn on May 13th, re: Province of Ontario, Judicial District of York.
10. Light switch plate from Judge Hryciuk's chambers.
11. Memo to Crowns, dated February 4, 1992, re: meeting at 21 McGill.
12. Three framed pictures of Wizard of Id drawings.
13. Black and gold dress.
14. Commission notes re: statement of Ms. Capobianco.
15. Notes entitled "Anticipated Evidence of Patrick Morris."
16. Diagram of The Swan banquet hall drawn by Mr. Morris.
17. Material prepared for the Canadian Judicial Centre re: Gender Equality, dated May, 1990, together with transcript of video.
18. Curriculum Vitae of Professor John Walter Adam Duckworth.
19. Curriculum Vitae of Dr. Steinberg, M.D., F.R.C.S. dated September 1, 1993.
20. Dr. Steinberg's medical report.

Appendix A

21. Group of letters received from members of the public filed on October 8, 1993 by Commission Counsel.
22. 123 letters in support of Judge Hryciuk filed by counsel for Judge Hryciuk.
23. 25 letters in support of Judge Hryciuk filed by counsel for Judge Hryciuk.

Appendix B

LIST OF APPEARANCES

Dennis R. O'Connor, Q.C. Freya Kristjanson	—	Commission Counsel
Richard D. McLean, Q.C. Mark Elkin	—	Counsel on behalf of His Honour Judge W.P. Hryciuk
Douglas C. Hunt, Q.C. Jane E. Kelly	—	Counsel on behalf of Kelly Smith and Susan Lawson
John S. Struthers T. Sam Boutzouvis	—	Counsel on behalf of His Honour Judge Bovard and Kelly Ann James



Appendix C

LIST OF WITNESSES

September 13, 1993 – (Monday)

Ms. Dorothy Marcil
Ms. Kelly Smith
Mr. Dennis Mills
Mr. Andrew Patrick Smith
Mr. John Beverley McMahon

September 14, 1993 – (Tuesday)

Ms. Lesley Baldwin
Ms. Susan Lawson
Mr. Paul Layefsky
Ms. Mary Hall
Ms. Marilyn Ellen Bartlett
Ms. Tammy Lee Wojcik
Ms. Susan Black

September 15, 1993 – (Wednesday)

Ms. Malka Goldenberg
Ms. Dale Lumb
His Honour Judge W.P. Hryciuk

September 16, 1993 – (Thursday)

His Honour Judge W.P. Hryciuk
Ms. Katherine McLeod
Mr. David Gondrin Humphrey
Mr. Fraser Hamilton
Mr. Hugh Russell Locke
Ms. Judy York
Ms. Iryna Revutsky

September 17, 1993 – (Friday)

Ms. Lauren Elizabeth Marshall
His Honour Judge Walter Gonet
Ms. Marcy Segal
Mr. Peter Griffiths
Ms. Florence Clarke
Ms. Michelle Leblanc
Mr. Peter Shoniker
Ms. Sandy Starratt
Mr. William Trudell
Ms. Corinne Rivers
Mr. David Gorrell

Appendix C

His Honour Judge Donald Arthur Ebbs
Mr. David O'Connor
Mr. Lawrence Feldman

September 30, 1993 – (Thursday) – Index of Proceedings

Ms. Suzanne McKenzie
Ms. Janet Beneteau
Ms. Lori Montague

October 4, 1993 – (Monday)

Ms. Kelly Ann James
His Honour Judge Joseph Bovard

October 5, 1993 – (Tuesday)

His Honour Judge Joseph Bovard
Ms. Angie Capobianco
Mr. Marc David Pawlyshyn
His Honour Judge Brent Knazen
Her Honour Judge June Bernhard
Mr. David Fisher
His Honour Judge Ayres Couto
Mr. Patrick Morris

October 6, 1993 – (Wednesday)

Mr. Patrick Morris
Ms. Louise Mitchell
Ms. Barbara Bennett
Mr. Roman Haruk
Ms. Santa Marchese
Ms. Faye McWatt
Mr. Fred Fedorsen

October 7, 1993 – (Thursday)

His Honour Judge W.P. Hryciuk
Ms. Pauline Hunt
Ms. Michelle Fuerst
Mr. Earl Levy
Professor John Walter Adam Duckworth
Mr. Ilan Dishy
Ms. Laurie Gelfand
Mr. Mark Breslin
Dr. Wilfred Steinberg

Appendix D

LIST OF HEARING DATES

(all hearings held at the Commission of Inquiry Offices,
180 Dundas Street West, 21st Floor, Toronto)

1. Monday, July 26, 1993
2. Monday, August 23, 1993
3. Monday, September 13, 1993
4. Tuesday, September 14, 1993
5. Wednesday, September 15, 1993
6. Thursday, September 16, 1993
7. Friday, September 17, 1993
8. Thursday, September 30, 1993
9. Monday, October 4, 1993
10. Tuesday, October 5, 1993
11. Wednesday, October 6, 1993
12. Thursday, October 7, 1993
13. Friday, October 8, 1993

Appendix E (a)

**Commission of Inquiry
re: His Honour Judge Walter P. Hryciuk,
a Judge of the Ontario Court (Provincial Division)**

NOTICE OF PUBLIC HEARING

This Inquiry into the question of whether His Honour Judge Walter P. Hryciuk, a Judge of the Ontario Court (Provincial Division), should be removed from office has been constituted pursuant to Order in Council 369/93 dated February 3, 1993 and the provisions of section 50 of the *Courts of Justice Act*, R.S.O. 1990, c.C43. The Inquiry will convene on Monday, July 26, 1993 at 10:00 a.m. for the purpose of hearing preliminary motions. The public hearing for the taking of evidence will continue on Monday, September 13, 1993 at 10:00 a.m. The public hearing will take place at Hearing Room No. 2, 21st Floor, 180 Dundas Street West, Toronto, Ontario.

All persons who wish to make preliminary motions on July 26, 1993, who wish to give evidence at the Inquiry, or who have information they believe will be of interest to the Inquiry are requested to contact DENNIS R. O'CONNOR, Q.C., Commission Counsel, at:

COMMISSION OF INQUIRY
RE: HIS HONOUR JUDGE WALTER P. HRYCIUK,
A JUDGE OF THE ONTARIO COURT (PROVINCIAL DIVISION)
180 Dundas Street West, 22nd Floor
Toronto, Ontario M5G 1Z8
Telephone: (416) 598-0411

Dennis R. O'Connor, Q.C.
Commission Counsel

The Honourable
Madam Justice J. MacFarland
Commissioner

Appendix E (b)

**Commission of Inquiry
re: His Honour Judge Walter P. Hryciuk,
a Judge of the Ontario Court (Provincial Division)**

NOTICE OF PUBLIC HEARING

This Inquiry into the question of whether His Honour Judge Walter P. Hryciuk, a Judge of the Ontario Court (Provincial Division), should be removed from office will, following the recommendation of the Judicial Council to the Attorney General, consider the following matters of complaint:

1. That His Honour Judge Walter P. Hryciuk, on Saturday, January 18, 1992, at Old City Hall, Toronto, did sexually assault Ms. Kelly Smith, an Assistant Crown Attorney for the Toronto Region, by kissing her without her consent.
2. That His Honour Judge Walter P. Hryciuk, in 1988, made remarks of a sexual nature to Ms. Susan Lawson, an Assistant Crown Attorney, and drew her attention to a sexually graphic light switchplate in his judicial chambers.

The public hearing will commence on September 13, 1993 at 10:00 a.m., at Hearing Room No. 1, 21st Floor, 180 Dundas Street West, Toronto, and will continue daily at the same time and place until completed.

All persons who wish to give evidence at the Inquiry, or who have information they believe will be of interest to the Inquiry are requested to contact DENNIS R. O'CONNOR, Q.C., Commission Counsel, at:

COMMISSION OF INQUIRY
RE: HIS HONOUR JUDGE WALTER P. HRYCIUK,
A JUDGE OF THE ONTARIO COURT (PROVINCIAL DIVISION)
180 Dundas Street West, 22nd Floor
Toronto, Ontario M5G 1Z8

Telephone: (416) 598-0411

Applications by the electronic media to televise or otherwise record all or part of the proceedings must be made to Commission Counsel at the above address by August 13, 1993.

Dennis R. O'Connor, Q. C.
Commission Counsel

The Honourable
Madam Justice J. MacFarland
Commissioner



Appendix F (a)

Madam Justice
J. MacFarland
Commissioner
La juge J. MacFarland
Commissaire

Dennis R. O'Connor, Q.C.
Counsel
Avocat-conseil

Freya Kristjanson
Assistant Counsel
Avocat-conseil adjointe

Commission of Inquiry Re:
His Honour Judge W.P. Hryciuk
a Judge of the Ontario Court
(Provincial Division)

Commission d'enquête au sujet du
juge W.P. Hryciuk de la Cour de
l'Ontario (Division provinciale)

180 Dundas Street West
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Télé: (416) 325-8739

Commission Counsel

SUBMISSION ON PROCEDURE

TO: THE COMMISSIONER

Enclosed is the submission concerning procedures applicable to the conduct of the Inquiry which Commission Counsel propose to put before the public hearing of the Inquiry on July 26, 1993.

The enclosed submission has been circulated to the individuals who have indicated an intention to appear before the Inquiry, and will be made available to the public at large to provide an advance indication of the position Commission Counsel will be taking so that others may consider this submission and respond at the public hearing.

A. LOCATION OF PUBLIC HEARING

1. The public hearing of the Inquiry shall be held at Hearing Room No. 1, 21st Floor, 180 Dundas Street West, Toronto, Ontario.

B. STANDING

1. Any person requesting status to participate in the Inquiry shall make application by way of motion to the Commissioner at the preliminary motion day on July 26 or at the continuation of the hearing on September 13, 1993. The Commissioner shall determine the nature and extent of participation of the moving party.
2. The Inquiry shall maintain a list of all participants which shall be available for inspection by any person at the offices of the Inquiry at 180 Dundas Street West, 22nd Floor, Toronto, Ontario.
3. The conduct of participants shall be governed by the procedural rules of the Inquiry as determined by the Commissioner.

C. DOCUMENTS

1. Commission Counsel shall, by September 1, 1993, file with the Inquiry a list of documents within their possession which are relevant to the subject matter of the Inquiry. Participants shall be granted the opportunity to inspect the documents.
2. Other participants who have been granted standing to call evidence and who intend to do so shall, by September 8, 1993, file with the Inquiry a list of documents within their possession which are relevant to the subject matter of the Inquiry, and which they intend to introduce into

evidence at the Inquiry. Commission Counsel and participants shall be granted the opportunity to inspect the documents.

D. DISCLOSURE OF ANTICIPATED EVIDENCE OF WITNESSES

1. Commission Counsel and participants granted standing to call evidence shall, by September 1, 1993, provide to all other participants and Commission Counsel a summary of the anticipated evidence of the witnesses whom they intend to call. If Commission Counsel or a participant becomes aware of a witness after September 1st, the summary of anticipated evidence shall be provided forthwith.

E. EXPERT WITNESSES

1. Where any participant proposes to call an expert witness, Commission Counsel shall by September 1, 1993, and any other participant shall by September 10, 1993, provide to Commission Counsel and other participants a report setting out the name, address and qualifications of the expert, together with a summary of the substance of his or her proposed testimony.

F. ORDER OF EXAMINATION

1. As a general rule, Commission Counsel will lead evidence first. Participants granted standing to examine witnesses shall be given the opportunity to examine witnesses called by Commission Counsel in the order determined by the Commissioner, followed by re-examination by Commission Counsel.
2. Participants granted standing to call evidence shall be permitted to examine the witness they call. The order of further examinations is to be determined by the Commissioner. The participant calling a witness shall be entitled to re-examine the witness.

G. MOTIONS

1. Any motion made to the Commissioner shall be made upon reasonable notice to the Commissioner and Commission Counsel, as well as to any other participants.

H. SUMMONS TO WITNESS

1. The issue of a summons to witness shall be at the discretion of the Commissioner upon motion by Commission Counsel or a participant according to the rules of the Inquiry and the *Public Inquiries Act*.

I. WRITTEN SUBMISSIONS

1. Any person may file a written submission with the secretary at the public hearings, or by sending a copy to Commission Counsel at the Office of the Inquiry at 180 Dundas Street West, 22nd Floor, Toronto, Ontario. Each written submission will be given a number and a list of submissions will be maintained by the Commission. Anyone may review a written submission at the Inquiry office.

J. COMMENCEMENT DATE

1. It is proposed that the public hearing commence on July 26, 1993, and continue on September 13, 1993.

All of which is respectfully submitted.

DENNIS R. O'CONNOR
Commission Counsel



Appendix F (b)

Madam Justice
J. MacFarland
Commissioner
La juge J. MacFarland
Commissaire

Dennis R. O'Connor, Q.C.
Counsel
Avocat-conseil

Freya Kristjanson
Assistant Counsel
Avocat-conseil adjointe

Commission of Inquiry Re.
His Honour Judge W.P. Hryciuk
a Judge of the Ontario Court
(Provincial Division)

Commission d'enquête au sujet du
juge W.P. Hryciuk de la Cour de
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Télé: (416) 325-8739

Commission Counsel

SUBMISSION ON THE MEDIA

TO: THE COMMISSIONER

Enclosed is the submission concerning procedures applicable to media coverage of the Inquiry which Commission Counsel, in response to the Ruling by Madam Commissioner on August 23, 1993, proposes to put before the Public Hearing of the Inquiry on September 13, 1993.

The enclosed submission has been circulated to parties granted standing to participate in the Inquiry, as well as to the CBC, the Sangeet-Bharati Radio Program, and other media representatives who have contacted the Commission.

1. Video taping by a single, unobtrusively located C.B.C.-operated camera, using only the available room light, will be permitted.
2. The camera shall be fixed on a tripod in a convenient place during the hearing.
3. The pictures and sounds shall be made available through a pooling arrangement to any other interested media organization.
4. Media personnel are subject to the direction of the Commissioner at the hearing. Media personnel shall avoid any behaviour which disrupts or detracts from the process of the hearing, such as interviews of parties in the hearing room while the hearing is in session, movement of equipment while the hearing is in session, using supplementary lighting such as television light or electronic flashes, or other intrusive behaviour.
5. Microphones or tape recorders shall not be placed at the witness area, counsel tables, or on the Commissioner's dais, except with prior approval of the Commission.

All of which is respectfully submitted.

DENNIS R. O'CONNOR
Commission Counsel

